

BEND, OREGON

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 34687

---

PATRICK D. BROE AND BNS HOLDINGS, INC.  
--ACQUISITION OF CONTROL EXEMPTION--  
NEBRASKA, KANSAS & COLORADO RAILNET, INC., ILLINOIS RAILNET, INC.,  
AND GEORGIA & FLORIDA RAILNET, INC.

---

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1180.2(d)(2)

---

KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307

Attorney for APPLICANTS

Dated: April 21, 2005

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 34687

---

PATRICK D. BROE AND BNS HOLDINGS, INC.  
--ACQUISITION OF CONTROL EXEMPTION--  
NEBRASKA, KANSAS & COLORADO RAILNET, INC., ILLINOIS RAILNET, INC.,  
AND GEORGIA & FLORIDA RAILNET, INC.

---

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1180.2(d)(2)

---

Patrick D. Broe ("Mr. Broe") and BNS Holdings, Inc. ("BNS Holdings") (collectively "Applicants") file this Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(2), for Mr. Broe and BNS Holdings to indirectly control the Nebraska, Kansas & Colorado RailNet, Inc. ("NKCR"), Illinois RailNet, Inc. ("IR"), and Georgia & Florida RailNet, Inc. ("G&FR"), all Class III railroad. In support of this Notice of Exemption, the following information as required by 49 C.F.R. § 1180.4(g) is submitted:

Section 1180.6(a)

- (1) A description of the proposed transaction.
  - (i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of counsel to whom questions regarding the proposed transaction can be addressed.

Mr. Broe is a non-carrier individual who directly controls BNS Holdings, a non-carrier company, which, in turn, controls RN Rail Holdings, Inc. ("RN Rail"), also a non-carrier company. North America RailNet, Inc. ("NA RailNet") is a non-carrier holding company that

currently controls three (3) rail carrier subsidiaries: NKCR, IR and G&FR. RN Rail will be merged into NA RailNet whereupon RN Rail will cease to exist and NA RailNet will be the surviving subsidiary of BNS Holdings. Once that transaction is consummated, Mr. Broe and BNS Holdings will indirectly control NKCR, IR and G&FR via NA RailNet<sup>1</sup>.

Mr. Broe also directly controls OmniTRAX, Inc. ("OmniTRAX"), a non-carrier company that currently controls the following twelve (12) Class III railroads operating in eight States: Chicago Rail Link, LLC ("CRL"), Georgia Woodlands Railroad, LLC ("GWRC"), Great Western Railway of Colorado, LLC ("GWR"), Great Western Railway of Iowa, LLC ("CBGR"), Manufacturers' Junction Railway, LLC ("MJ"), Newburgh & South Shore Railroad Limited ("NSR"), Northern Ohio & Western Railway, LLC ("NOW"), Panhandle Northern Railroad, LLC ("PNR"), Alliance Terminal Railroad, LLC ("ATR"), Fulton County Railway, LLC ("FCR"), Alabama & Tennessee River Railway, LLC ("ATN"), and Kettle Falls International Railway, LLC ("KFR").

The rail lines operated by CRL, GWRC, GWR, CBGR, MJ, NSR, NOW, PNR, ATR, FCR, ATN and KFR do not connect with the rail lines operated by NKCR, IR and G&FR. The rail lines operated by NKCR are located in Nebraska, Kansas and Colorado. None of the railroads controlled by OmniTRAX operates a rail line in Kansas or Nebraska. GWR operates rail lines in the Fort Collins, Greeley and Longmont area of Colorado whereas NKCR's rail line in Colorado extends no further west than Sterling, CO. Consequently, the Colorado rail line operated by NKCR is a substantial distance from the lines operated by GWR.

---

<sup>1</sup> As soon as the transaction is closed NKCR will be renamed Nebraska, Kansas & Colorado Railway, Inc., IR will be renamed Illinois Railway, Inc., and G&FR will be renamed Georgia & Florida Railway, Inc.

IR operates four rail lines west of Chicago, IL, whereas MJ's rail line is located in Cicero, IL and CRL's rail lines are located within Chicago. Consequently, IR's rail lines are a substantial distance from the lines operated by MJ and CRL.

G&FR operates rail lines in southern Georgia and northern Florida. FCR's rail lines are located in Atlanta and GWRC's rail line is located east of Atlanta. Consequently, G&FR's rail lines are located a substantial distance from the lines operated by FCR and GWRC.

Also, the involved transaction is not part of a series of anticipated transactions that would connect the rail lines operated by NKCR, IR and G&FR with any railroad in the OmniTRAX corporate family. Finally, NKCR, IR and G&FR are not Class I rail carriers nor are any of the carriers controlled by OmniTRAX. Accordingly, this transaction falls within the class of transactions described at 49 C.F.R. § 1180.2(d)(2), and exempt from prior approval by the Surface Transportation Board ("Board").

The name and business address of Applicants are as follows:

Patrick D. Broe  
252 Clayton Street  
Fourth Floor  
Denver, CO 80206

BNS Holdings, Inc.  
252 Clayton Street  
Fourth Floor  
Denver, CO 80206

OmniTRAX, Inc.  
50 South Steele Street  
Suite 250  
Denver, CO 80209

North American RailNet, Inc.  
252 Clayton Street  
Fourth Floor  
Denver, CO 80206

Illinois RailNet, Inc.  
252 Clayton Street  
Fourth Floor  
Denver, CO 80206

Georgia & Florida RailNet, Inc.  
252 Clayton Street  
Fourth Floor  
Denver, CO 80206

Nebraska, Kansas & Colorado RailNet, Inc.  
252 Clayton Street  
Fourth Floor  
Denver, CO 80206

Kettle Falls International Railway, LLC  
50 South Steele Street  
Suite 250  
Denver, CO 80209

Alabama & Tennessee River Railway, LLC  
50 South Steele Street  
Suite 250  
Denver, CO 80209

Fulton County Railway, LLC  
50 South Steele Street  
Suite 250  
Denver, CO 80209

Alliance Terminal Railroad, LLC  
50 South Steele Street  
Suite 250  
Denver, CO 80209

Chicago Rail Link, LLC  
2728 E. 104<sup>th</sup> Street  
Chicago, IL 60617

Georgia Woodlands Railroad, LLC  
210 Depot Street  
P.O. Box 549  
Washington, GA 30673

Great Western Railway of Colorado, LLC  
P.O. Box 537  
950 Taylor Avenue  
Loveland, CO 80538

Great Western Railway of Iowa, LLC  
200 29<sup>th</sup> Avenue  
Council Bluffs, IA 51501

Manufacturers' Junction Railway, LLC  
2335 S. Cicero Avenue  
Cicero, IL 60804

Newburgh & South Shore Railroad Limited  
4200 East 71<sup>st</sup> Street  
Cleveland, OH 44105

Northern Ohio & Western Railway, LLC  
729 North County Road 11  
Tiffin, OH 44883

Panhandle Northern Railroad, LLC  
100 East Grand  
Borger, TX 79007

Applicants' representative:

Karl Morell  
Of Counsel  
Ball Janik LLP  
1455 F Street, N.W.  
Suite 225  
Washington, D.C. 20005  
(202) 638-3307

(ii) The proposed time schedule for consummation of the proposed transaction.

Applicants intend to consummate this transaction on or shortly after May 2, 2005.

(iii) The purpose sought to be accomplished by the proposed transaction.

Applicants intend to acquire NA RailNet and its three railroad subsidiaries as an investment in order to reduce overhead expenses, coordinate billing, maintenance, mechanical

and personnel policies and practices of its rail carrier subsidiaries and thereby improve the overall efficiency of rail service provided by, and financial viability of, the fifteen (15) railroads.

- (5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

CRL's lines are located in Illinois.

GWRC's line is located in Georgia.

GWR's lines are located in Colorado.

CBGR's lines are located in Iowa.

MJ's lines are located in Illinois.

NSR's lines are located in Ohio.

NOW's line is located in Ohio.

PNR's line is located in Texas.

ATR's lines are located in Texas.

FCR's lines are located in Georgia.

ATN's lines are located in Alabama.

KFR's rail lines are located in Washington

IR's rail lines are located in Illinois.

G&FR's rail lines are located in Georgia and Florida.

NKCR's rail lines are located in Nebraska, Kansas and Colorado.

- (6) Map.

Maps illustrating the rail lines of CRL, GWRC, GWR, CBGR, MJ, NSR, NOW, PNR, ATR, FCR, ATN, KFR, IR, G&FR and NKCR are attached as Exhibit 1.

- (7)(ii) Agreement.



The Assignment and Joinder Agreement and a redacted version of the Agreement and Plan of Merger are attached as Exhibit 2. An unredacted copy of the Agreement and Plan of Merger is being filed under seal pursuant to the accompanying Motion for Protective Order.

Because CRL, GWRC, GWR, CBGR, MJ, NSR, NOW, PNR, ATR, FCR, ATN, KFR, IR, G&FR, and NKCR are Class III carriers, no labor protection may be imposed on this transaction pursuant to 49 U.S.C. § 11326(c).

### **ENVIRONMENTAL AND HISTORIC IMPACTS**

Mr. Broe and BNS Holdings will indirectly control IR, G&FR, and NKCR for the purpose of continued rail operations where further Board approval is required to abandon or discontinue any service, and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

The indirect control of IR, G&FR and NKCR by Mr. Broe and BNS Holdings will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of these lines to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the lines; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. This transaction will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, this transaction does not contemplate the transportation of any ozone depleting materials. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Karl Morell", written over a horizontal line.

KARL MORELL

Of Counsel

BALL JANIK LLP

1455 F Street, N.W.

Suite 225

Washington, D.C. 20005

(202) 638-3307

Attorney for APPLICANTS

Dated: April 21, 2005

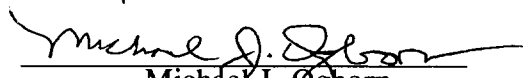
VERIFICATION

STATE OF COLORADO

CITY AND COUNTY OF DENVER


)  
) ss.  
)

I, Michael J. Ogborn, being duly sworn depose and state that I am Vice President of BNS Holdings, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

  
Michael J. Ogborn

SUBSCRIBED AND SWORN TO before me this 11 day of April, 2005, in the City and County of Denver, State of Colorado.

My Commission Expires: 11/01/2008

  
Notary Public



My Commission Expires 11/01/2008

## Chicago RailLink

**Logo  
Area**

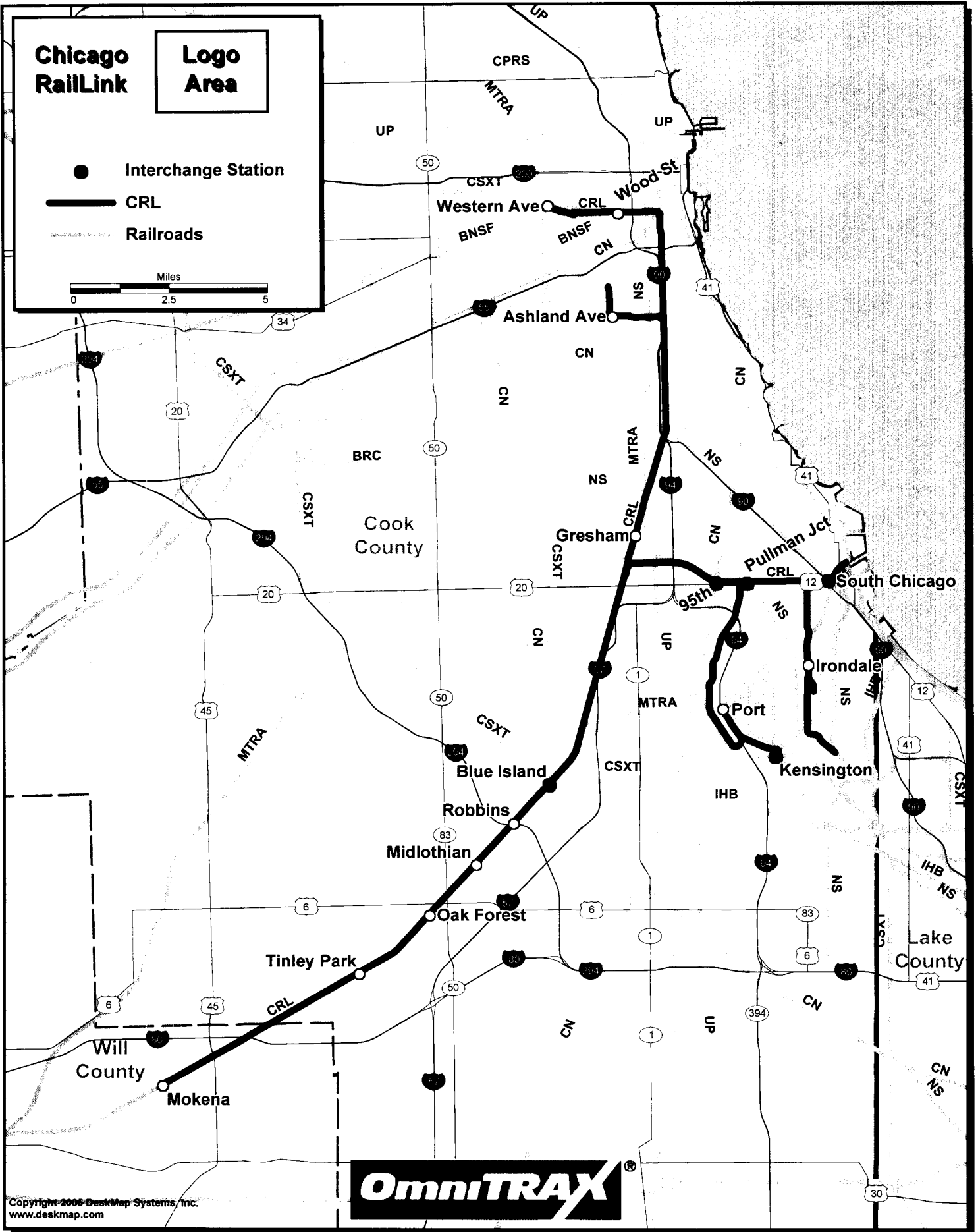
● **Interchange Station**

**CRL**

## Railroads

Miles

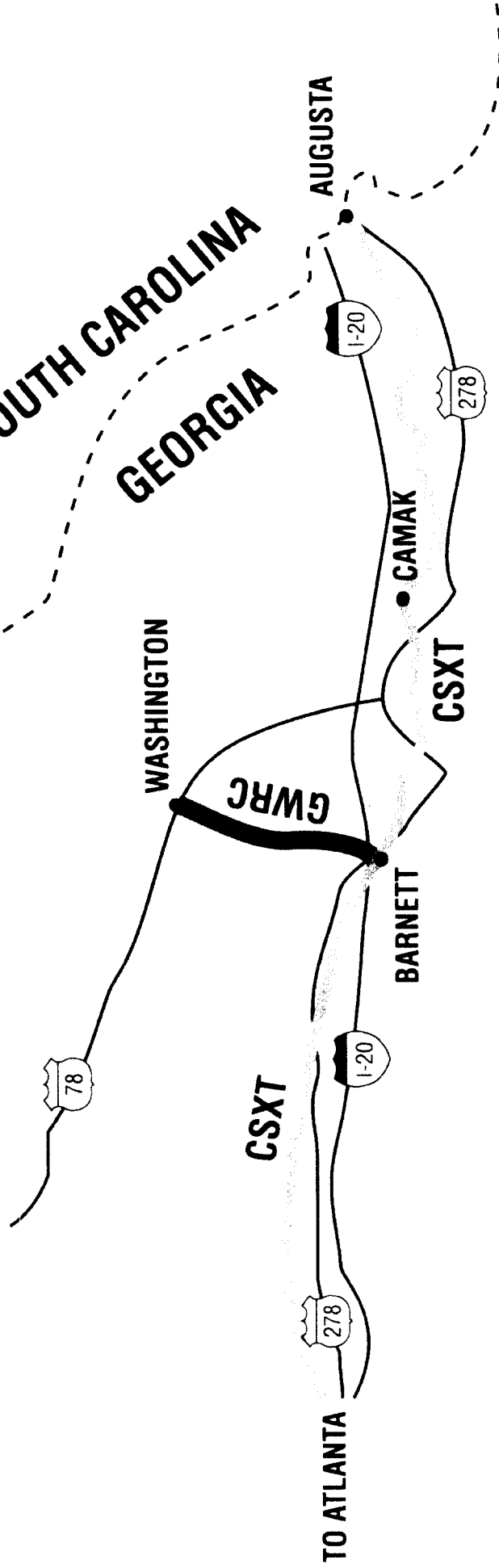
Response	Percentage
All of them	4.2%
Some of them	3.8%
None of them	1.5%
Don't know	0.5%



Copyright 2006 DeskMap Systems, Inc.  
www.deskmap.com

**GEORGIA**

**SOUTH CAROLINA**  
**GEORGIA**



**GEORGIA WOODLANDS RAILROAD (GWRC)**

**INTERCHANGE POINT:**

**CSX TRANSPORTATION (CSXT)**  
Barnett

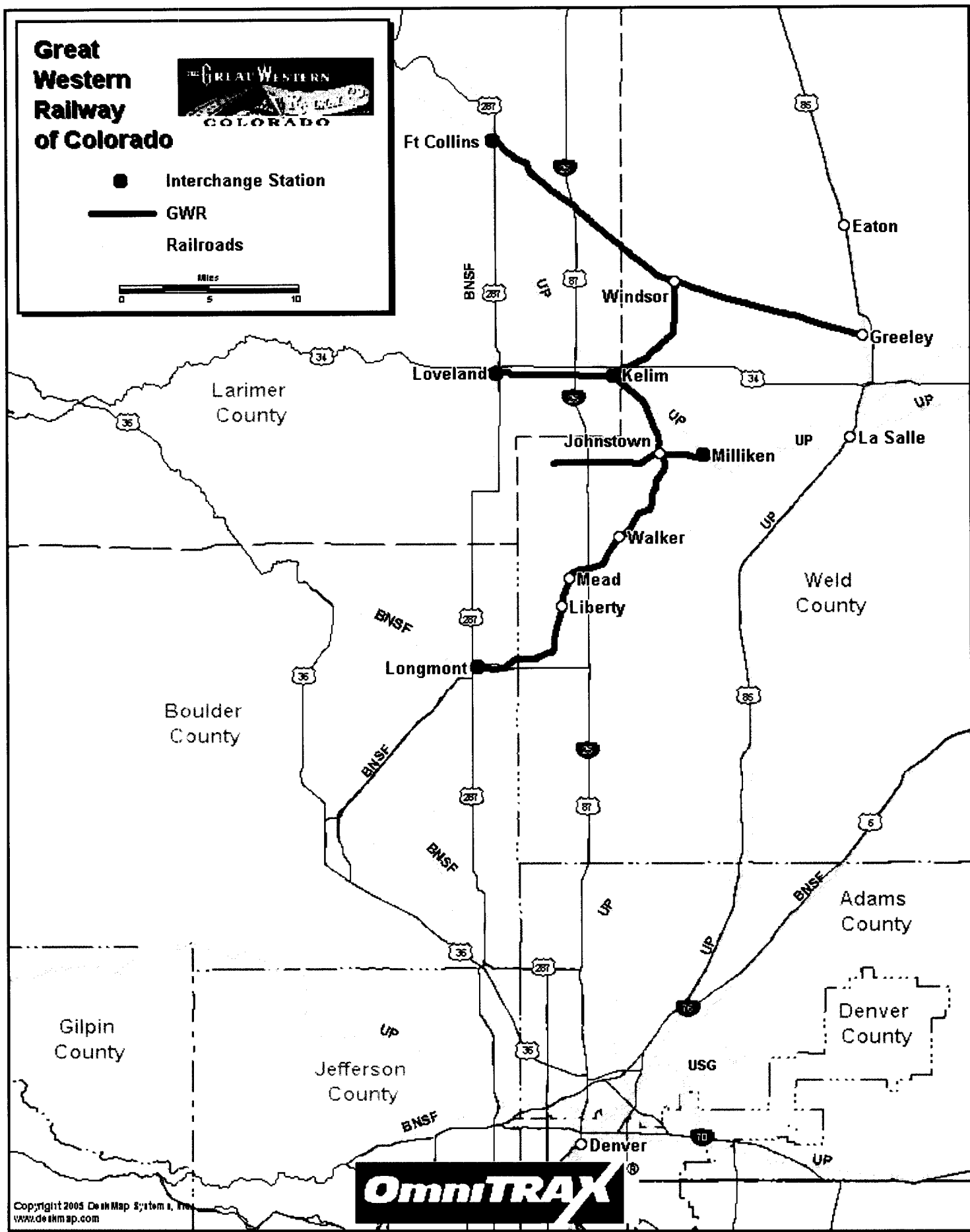
**GEORGIA  
WOODLANDS**

# Great Western Railway of Colorado

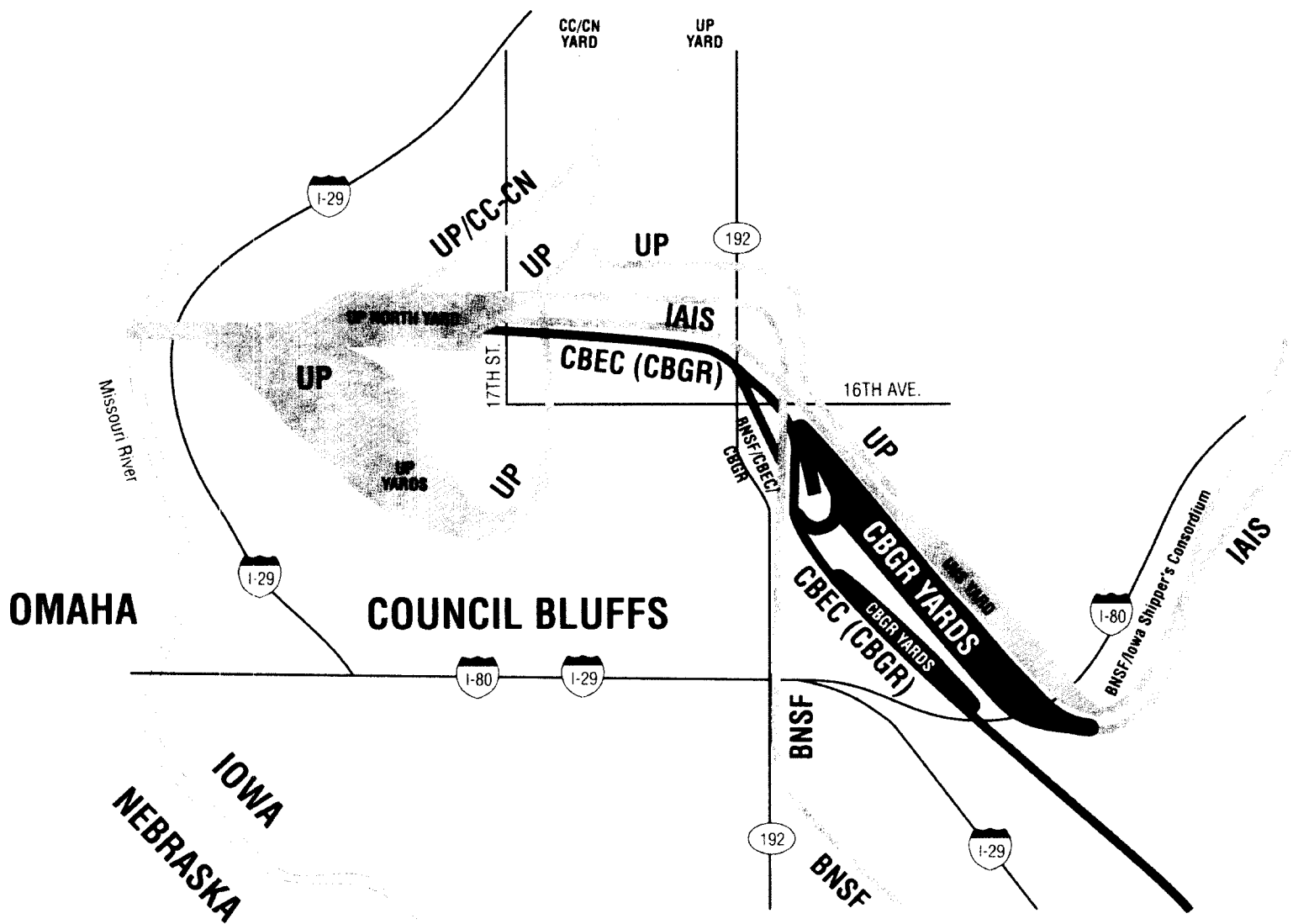


● Interchange Station

— GWR Railroads



**OmniTRAX**



**—** GREAT WESTERN RAILWAY OF IOWA (CBGR)

**INTERCHANGE POINTS:**

**BURLINGTON NORTHERN SANTA FE (BNSF)**  
16th Avenue

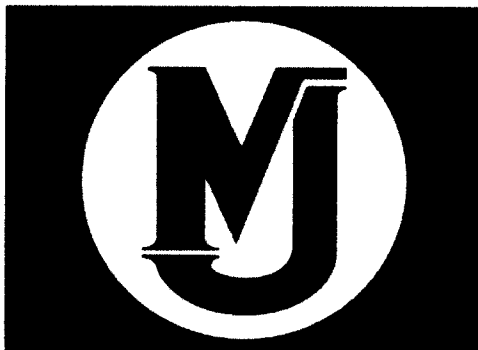
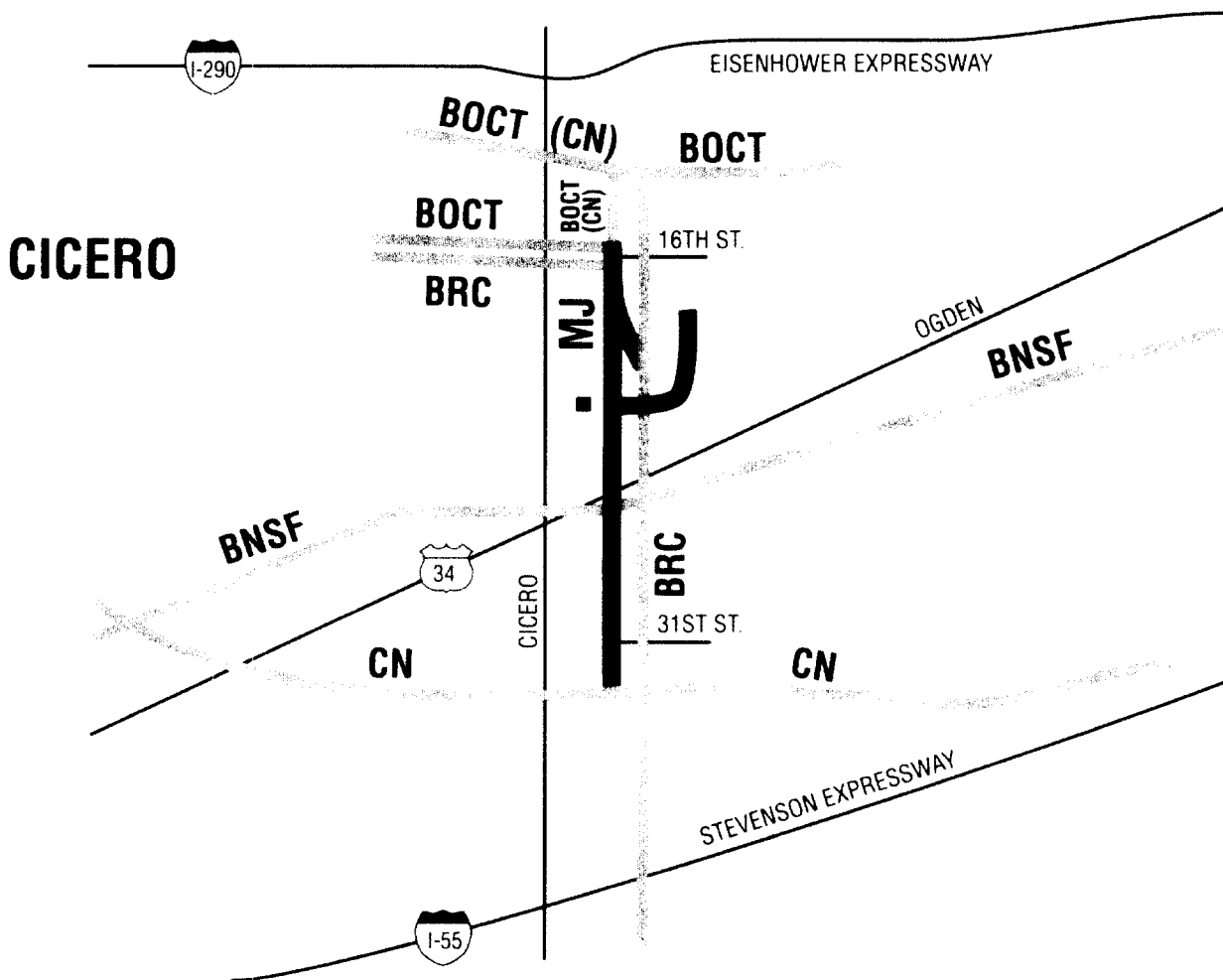
**CHICAGO, CENTRAL & PACIFIC (CC/CN)**  
17th Street (UP North Yard)

**CBEC RAILWAY COMPANY (CBEC)**  
CBGR Yards

**IOWA INTERSTATE (IAIS)**  
Council Bluffs

**UNION PACIFIC (UP)**  
17th Street (UP North Yard)

# CHICAGO



**MANUFACTURERS' JUNCTION RAILWAY (MJ)**

**LOCOMOTIVE REHABILITATION CENTER**

## INTERCHANGE POINTS:

**BURLINGTON NORTHERN SANTA FE (BNSF)**  
Cicero

**BELTS RAILWAY CO. OF CHICAGO (BRC)**  
Cicero

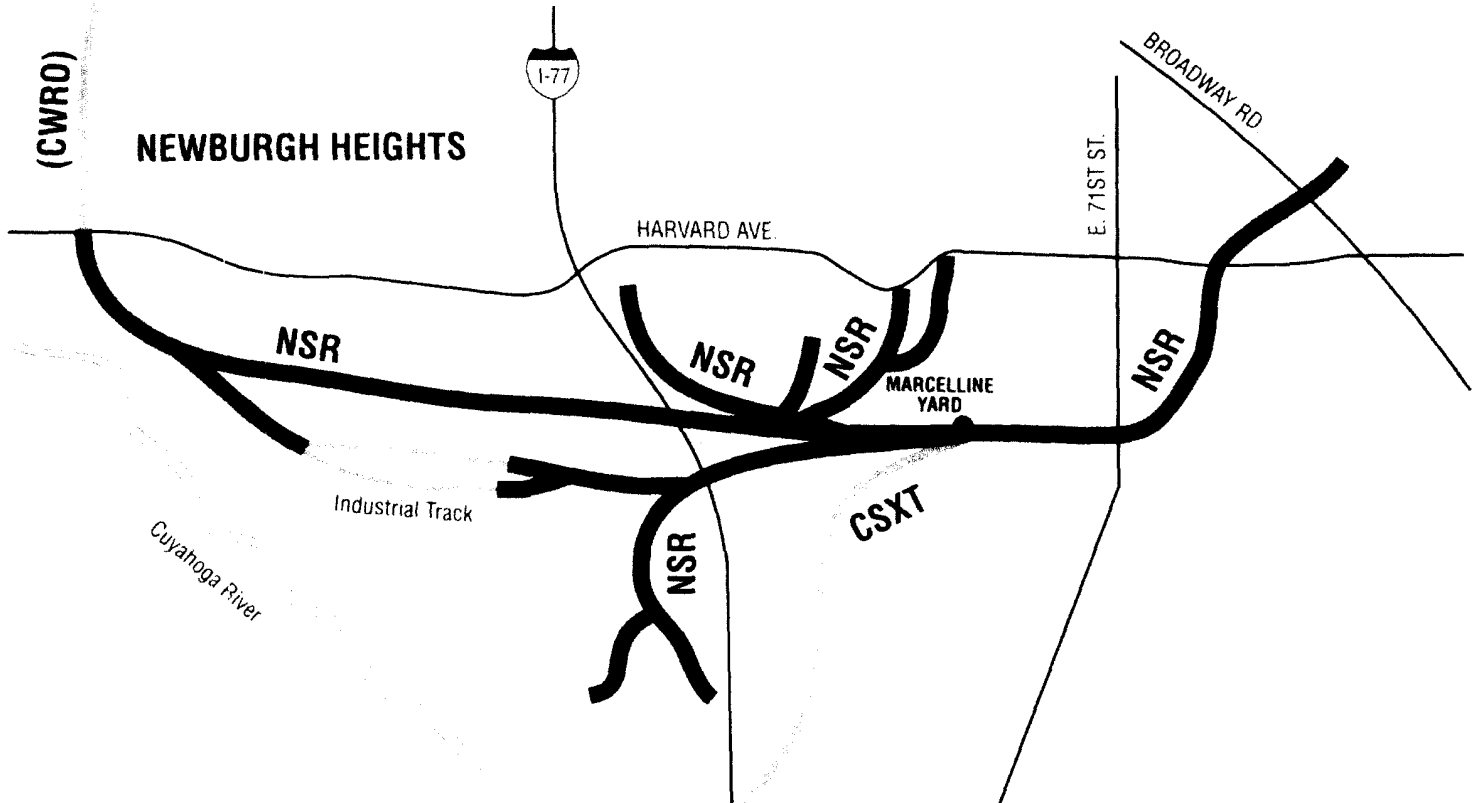
**BALTIMORE & OHIO CHICAGO TERMINAL/CSX TRANSPORTATION (BOCT/CSXT)**  
Cicero

**CANADIAN NATIONAL (CN)**  
Cicero

In addition to the above, MJ interchanges with all railroads serving Chicago through the BRC.



# CLEVELAND



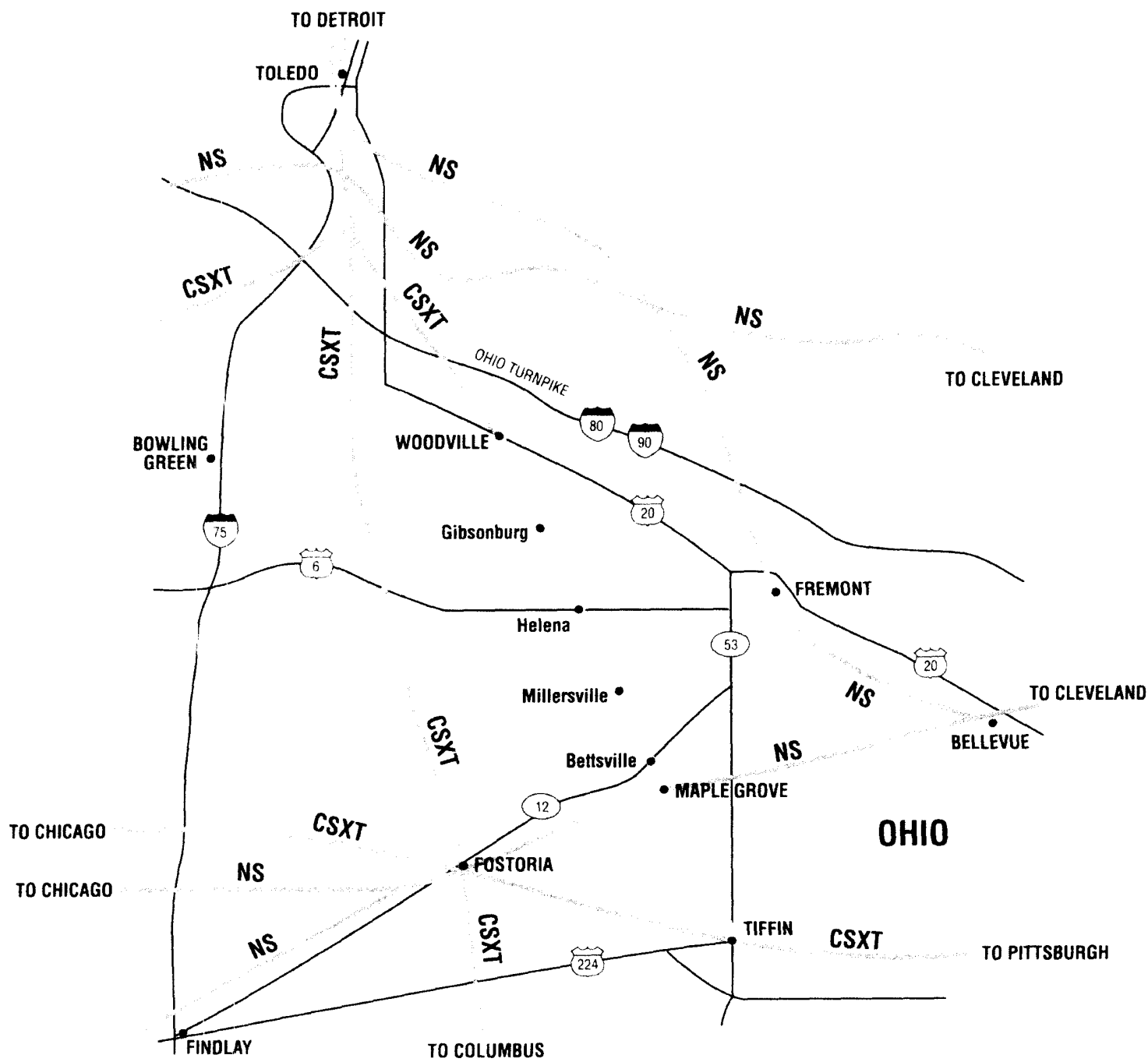
**NEWBURGH & SOUTH SHORE RAILROAD (NSR)**

## INTERCHANGE POINTS:

**CSX TRANSPORTATION (CSXT)**  
at Marcelline Yard (Cleveland)

**NORFOLK SOUTHERN RAILWAY (NS)**  
at Marcelline Yard (Cleveland)

**CLEVELAND WORKS RAILWAY COMPANY (CWRO)**  
at Harvard Avenue (Newburgh Heights)



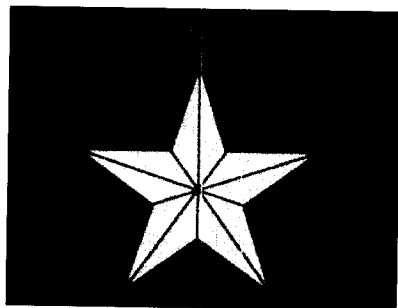
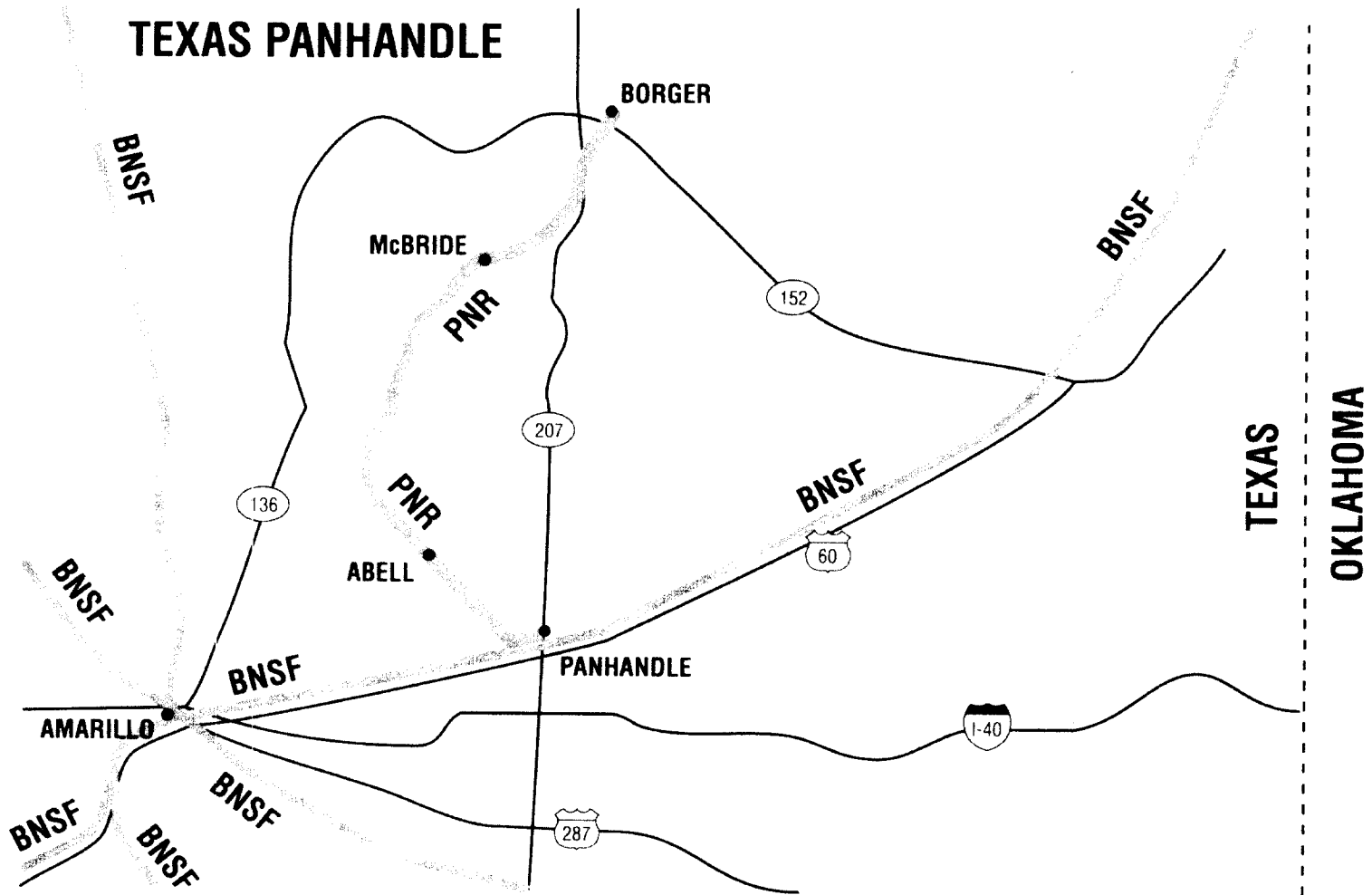
NORTHERN OHIO & WESTERN RAILWAY (NOW)

**INTERCHANGE POINTS:**

NORFOLK SOUTHERN (NS)  
Maple Grove

CSX TRANSPORTATION (CSXT)  
Tiffin  
Woodville

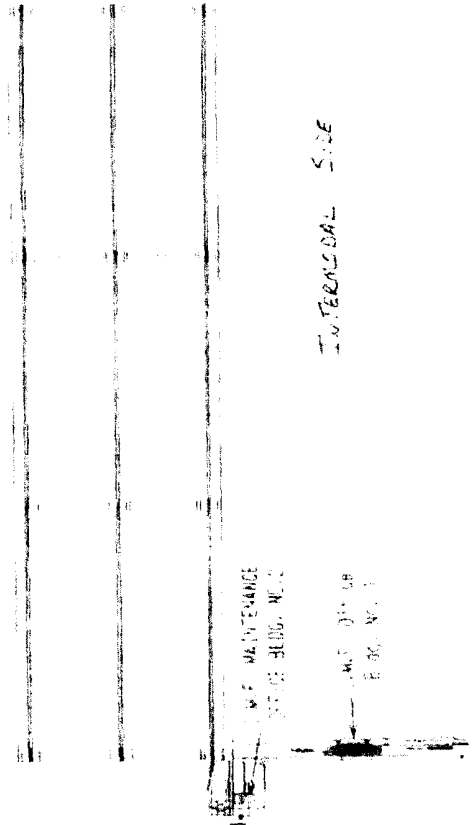
# TEXAS PANHANDLE



PANHANDLE NORTHERN RAILROAD (PNR)

INTERCHANGE POINT:

BURLINGTON NORTHERN SANTA FE (BNSF)  
Panhandle



FUEL  
FACILITIES  
NO PUBLIC  
ACCESS

RAILROAD

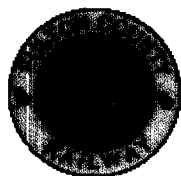
ENTRANCE

ENTRANCE

ENTRANCE

Alliance Terminal Railroad LLC

# Fulton County Railway



● Interchange Station

— FCR  
— Railroads

Miles  
0 1 2

Cobb County

Fulton County  
Airport-Brown Field

Atlanta

Fulton Industrial  
District

Douglas County

Fulco Yard

Fulco Jct

Fulton County

**OmniTRAX**®

# Alabama & Tennessee River Railway

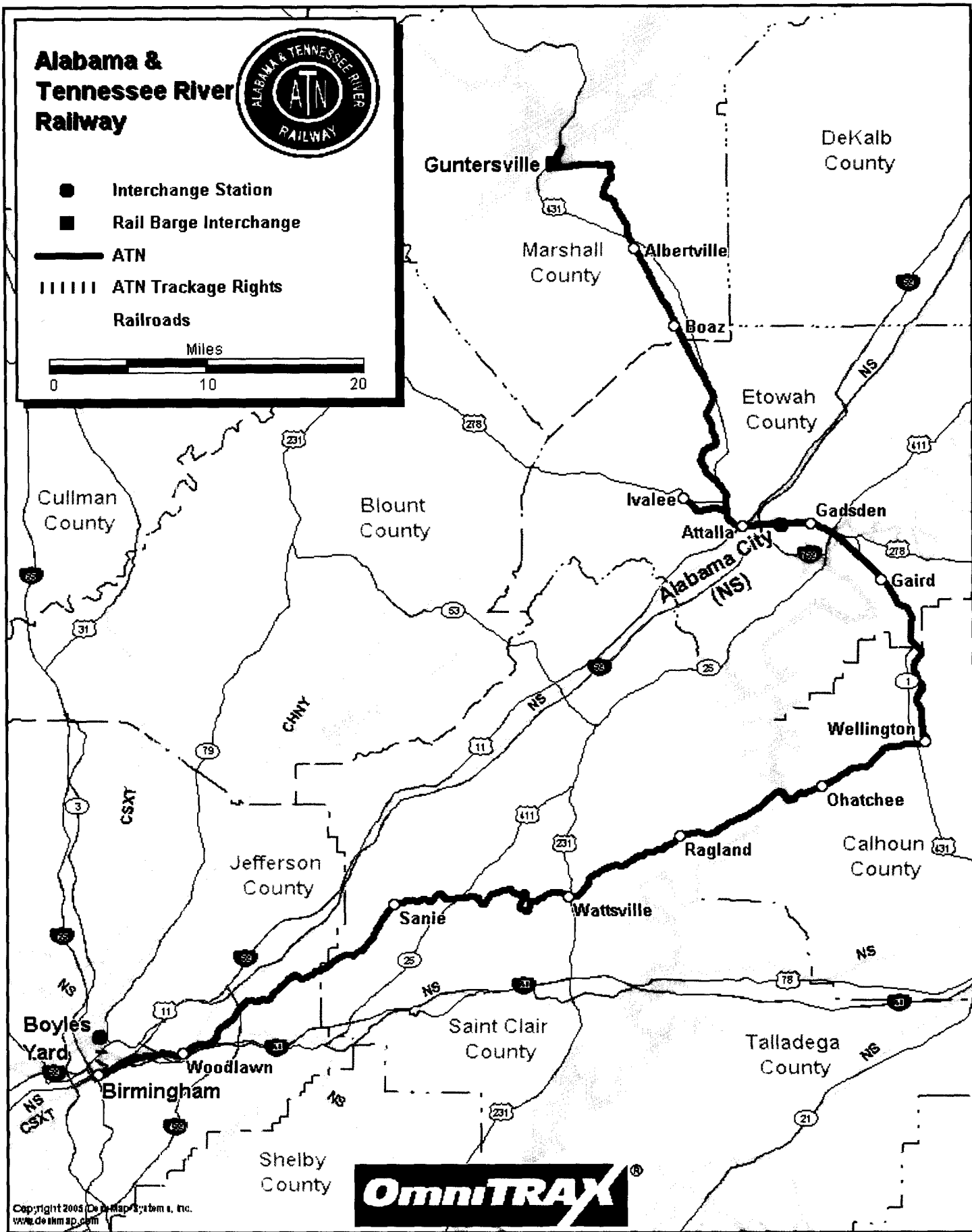


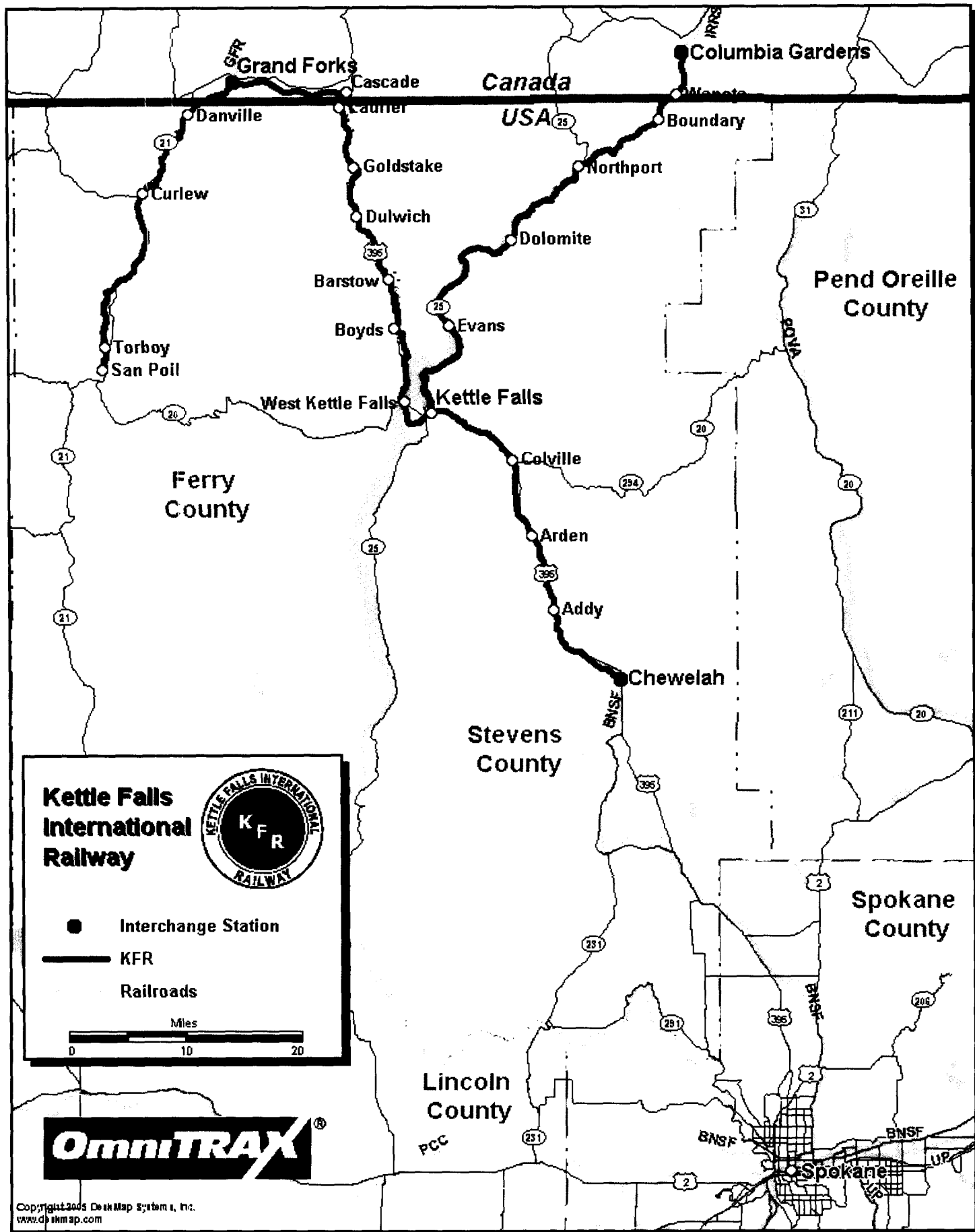
- Interchange Station
- Rail Barge Interchange

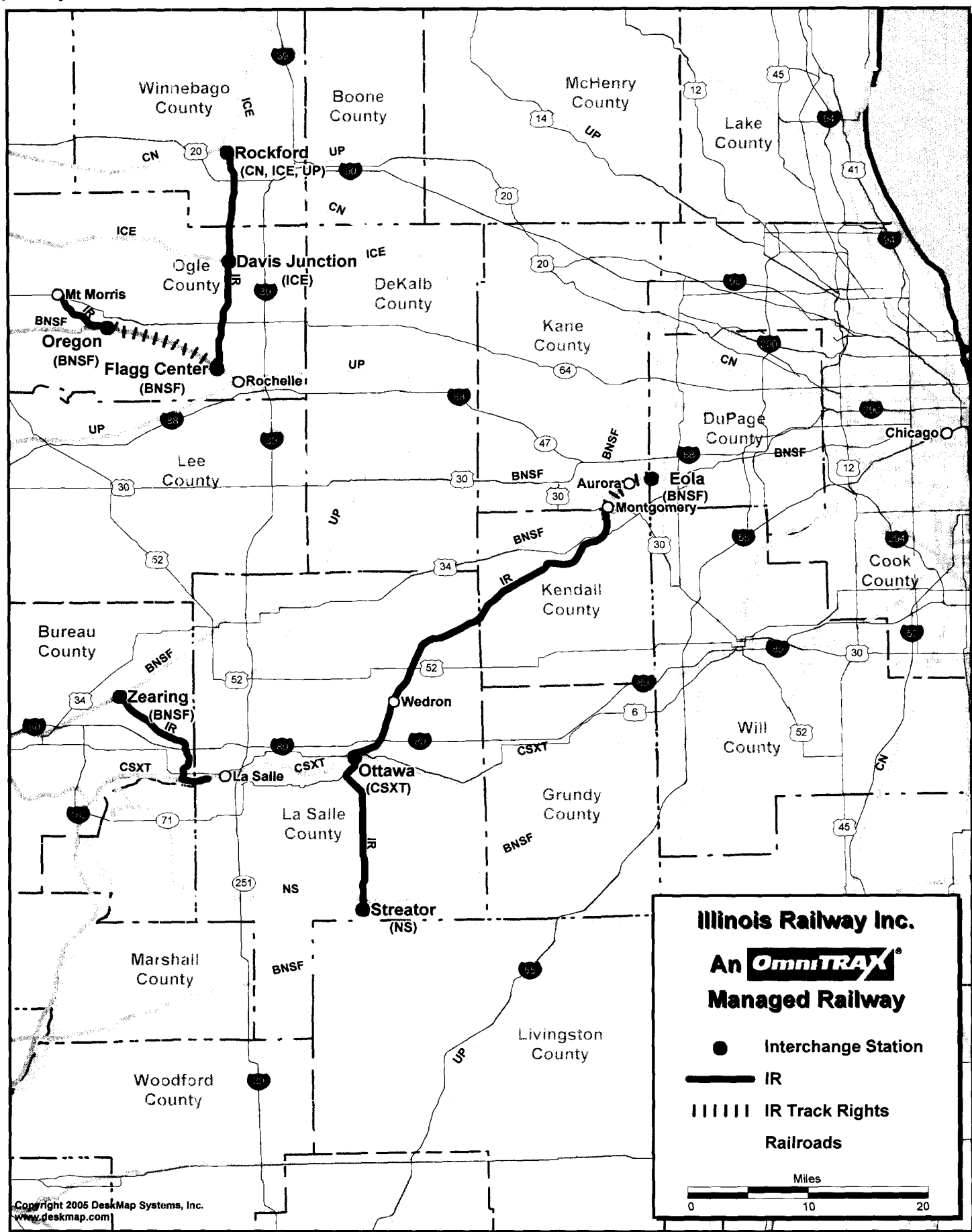
— ATN

||||| ATN Trackage Rights

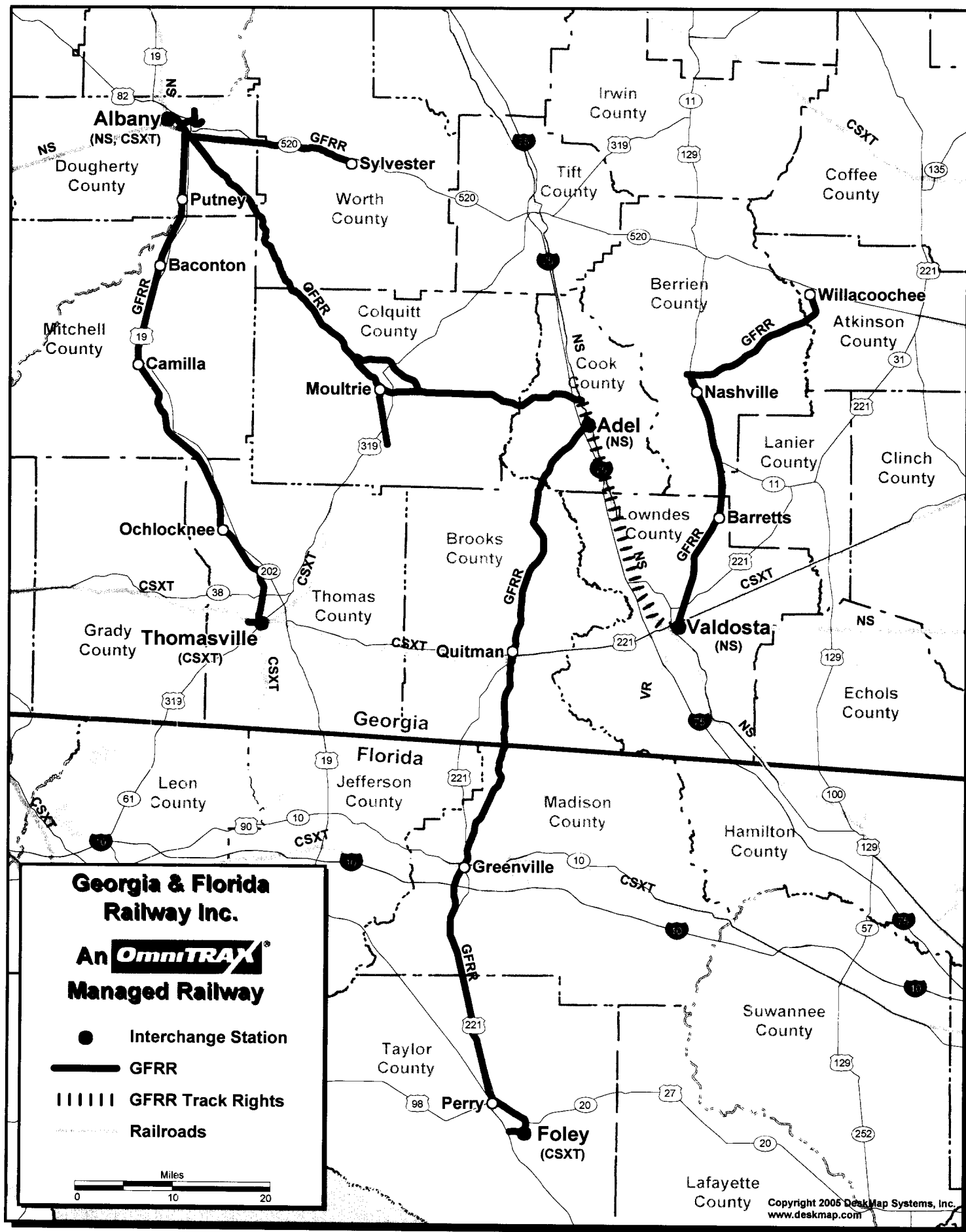
— Railroads

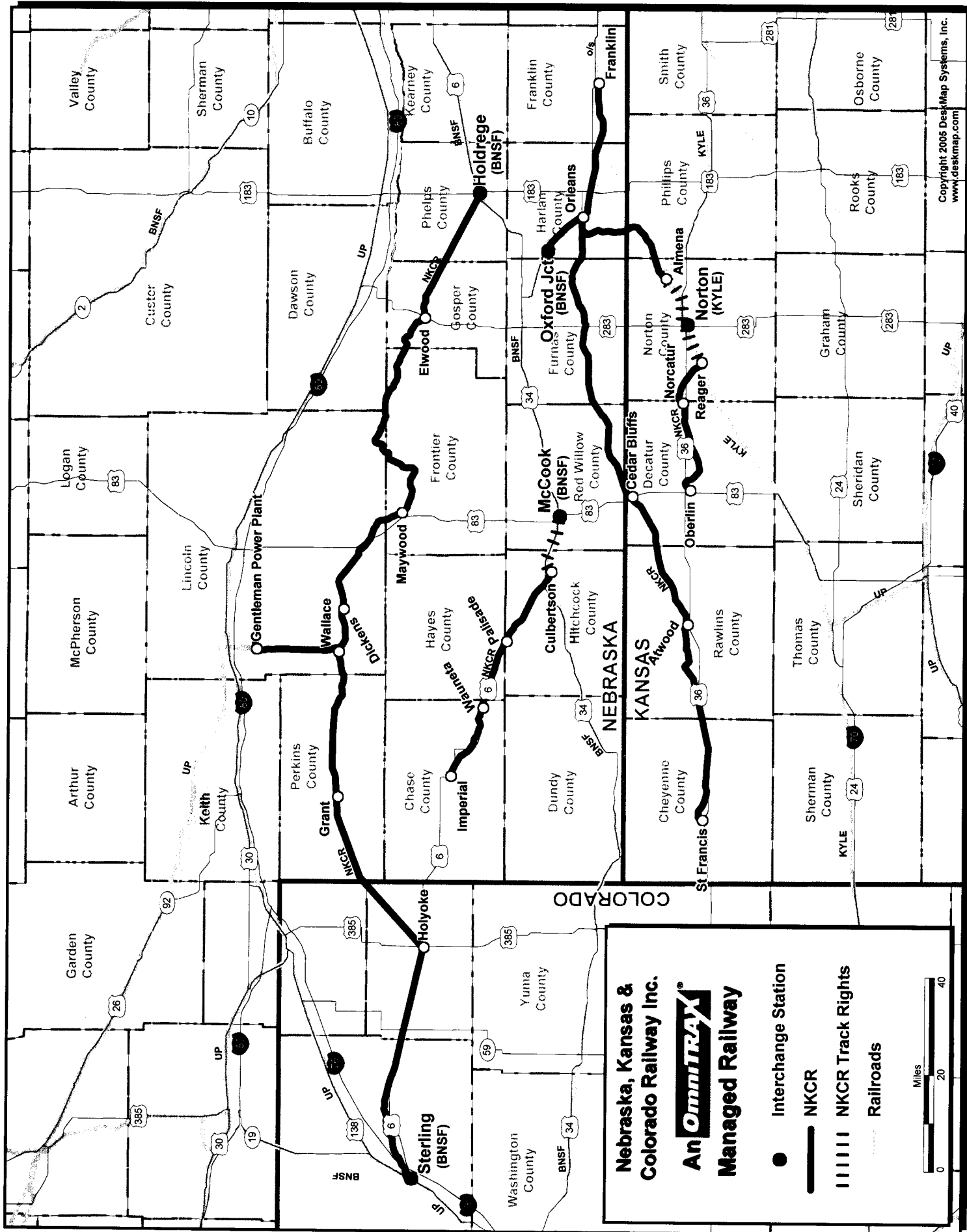








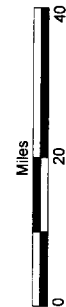




Nebraska, Kansas &  
Colorado Railway Inc.

An **OmniTrax**<sup>®</sup>  
Managed Railway

- Interchange Station
- NKCR
- ||||| NKCR Track Rights
- Railroads



## EXHIBIT 2

## ASSIGNMENT AND JOINDER AGREEMENT

This Assignment and Joinder Agreement (this "Agreement") is entered into as of April 7, 2005, by and among OmniTRAX, Inc., a Colorado corporation ("Purchaser"), BNS Holdings, Inc., a Colorado corporation ("BNS"), North American RailNet, Inc., a Delaware corporation (the "Company"), and RN Rail Holdings, Inc., a Delaware corporation ("Merger Sub").

### RECITALS

A. Purchaser, the Company and Merger Sub, are parties to an Agreement and Plan of Merger (the "Merger Agreement") dated as of March 25, 2005, pursuant to which, as of the Effective Time, Merger Sub will be merged with and into the Company and Purchaser, as the sole stockholder of Merger Sub, will become the sole stockholder of the Company. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in the Merger Agreement.

B. Purchaser desires to assign to BNS all of the issued and outstanding shares of capital stock of Merger Sub (the "Merger Sub Stock"), and BNS desires to accept assignment of the Merger Sub Stock from Purchaser, so that BNS will become the sole stockholder of the Company as of the Effective Time.

C. In connection with the assignment of the Merger Sub Stock by Purchaser to BNS, BNS has agreed to become a party to the Merger Agreement, Purchaser has agreed to confirm its continuing obligations under the Merger Agreement, notwithstanding the assignment to BNS of the Merger Sub Stock, and the Company has agreed to the assignment of the Merger Sub Stock and the joinder of BNS as a party to the Agreement, all as more fully set forth herein.

### ASSIGNMENT AND AGREEMENT

In consideration of the covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged:

1. Purchaser hereby assigns to BNS all of the issued and outstanding capital stock of Merger Sub, free and clear of all liens and encumbrances. Upon the execution of this Agreement, Purchaser shall deliver to BNS the stock certificate representing the Merger Sub Stock duly endorsed as required to transfer the stock from Purchaser to BNS on the books of Merger Sub.

2. BNS hereby joins as a party to the Merger Agreement, and in connection therewith:

(a) agrees to be subject to all of the terms and conditions of the Merger Agreement as if BNS had been an original party thereto in place of Purchaser;

(b) makes the same representations and warranties to the Company, with respect to itself and Merger Sub, as Purchaser has made, with respect to itself and Merger Sub, in Article IV of the Merger Agreement;

(c) agrees to perform all of the covenants and agreements of Purchaser in the Merger Agreement, including, without limitation, those set forth in Articles II, VI, VII and VIII thereof;

(d) agrees to execute and deliver to the Company all of the documents required to be executed by Purchaser and delivered to the Company by Purchaser in connection with the Closing under the Merger Agreement, including, without limitation, the certified resolutions, officers certificates and long-form solvency certificate required by Section 9.2 thereof; and

(e) agrees to take any other action reasonably requested by the Company or the Stockholders' Representative in order to give proper effect to the agreements contemplated hereby.

3. Notwithstanding the assignment to BNS of the Merger Sub Stock and the joinder of BNS as a party to the Merger Agreement, Purchaser shall continue as a party to the Merger Agreement, and shall not be released from any obligations contained therein, and in connection therewith:

(a) agrees to continue to be subject to all of the terms and conditions of the Merger Agreement as if BNS had not joined as a party thereto;

(b) continues to make the representations and warranties with respect to itself and Merger Sub in Article IV thereof;

(c) agrees to continue to be responsible for the performance of all of Purchaser's covenants and agreements in the Merger Agreement, including, without limitation, those set forth in Articles II, VI, VII and VIII thereof;

(d) agrees to execute and deliver to the Company all of the documents required to be executed by Purchaser and delivered to the Company by Purchaser in connection with the Closing under the Merger Agreement, including, without limitation, the certified resolutions, officers certificates and long-form solvency certificate required by Section 9.2 thereof, except that BNS shall replace Purchaser as a party to the Escrow Agreement; and

(e) agrees to take any other action reasonably requested by the Company or the Stockholders' Representative in order to give proper effect to the agreements contemplated hereby.

4. The Company hereby acknowledges and agrees: (a) to the assignment of the Merger Sub Stock to BNS and the joinder of BNS as a party to the Merger Agreement on the terms and subject to the conditions set forth in this Agreement, and (b) that BNS shall be entitled to all of the rights and remedies of Purchaser under the terms of the Merger Agreement as the

successor to Purchaser as the sole stockholder of Merger Sub, including, without limitation, the rights under Section 8.1 thereof. In connection with the foregoing, Purchaser hereby acknowledges and agrees that Purchaser shall not be entitled to any rights and remedies under the Merger Agreement, and that all such rights and remedies have been assigned to BNS.

5. Notices under the Agreement shall be deemed given to BNS when given to Purchaser as set forth in the Agreement.

6. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of laws (other than Sections 5-1401 and 5-1402 of the New York General Obligations law.

\*\*\*\*\*

In Witness Whereof, the parties have executed this Agreement as of the date set forth above.


PURCHASER:

OMNITRAX, INC.

By:   
Dwight N. Johnson, President

BNS:

BNS HOLDINGS, INC.

By:   
Dwight N. Johnson, President

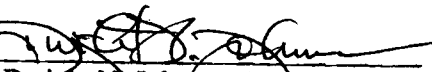
COMPANY:

NORTH AMERICAN RAILNET, INC.

By \_\_\_\_\_  
Name: Robert F. McKenney  
Title: Chairman & CEO

MERGER SUB:

RN RAIL HOLDINGS, INC.

By:   
Dwight N. Johnson, President

In Witness Whereof, the parties have executed this Agreement as of the date set forth above.

PURCHASER:

OMNITRAX, INC.

By: \_\_\_\_\_  
Dwight N. Johnson, President

BNS:

BNS HOLDINGS, INC.

By: \_\_\_\_\_  
Dwight N. Johnson, President

COMPANY:

NORTH AMERICAN RAILNET, INC.

By:   
Name: Robert F. McKenney  
Title: Chairman & CEO

MERGER SUB:

RN RAIL HOLDINGS, INC.

By: \_\_\_\_\_  
Dwight N. Johnson, President



AGREEMENT AND PLAN OF MERGER

by and among

NORTH AMERICAN RAILNET, INC.,

OMNITRAX, INC.

and

RN RAIL HOLDINGS, INC.

Dated as of March 25, 2005

## TABLE OF CONTENTS

	PAGE
ARTICLE I      DEFINITIONS .....	1
Section 1.1    Defined Terms .....	1
Section 1.2    Interpretation .....	9
ARTICLE II      THE MERGER .....	10
Section 2.1    The Merger .....	10
Section 2.2    Closing .....	10
Section 2.3    Effective Time .....	10
Section 2.4    Closing Working Capital Report; Purchase Price Adjustment .....	10
Section 2.5    Articles of Incorporation .....	12
Section 2.6    Bylaws .....	13
Section 2.7    Directors of the Surviving Corporation .....	13
Section 2.8    Officers of the Surviving Corporation .....	13
Section 2.9    Effect of Merger on Capital Stock .....	13
Section 2.10   Exchange of Certificates .....	14
Section 2.11   Payment at Closing for Indebtedness under the Credit Agreement .....	16
Section 2.12   Payments at Closing for Expenses .....	16
Section 2.13   Transfer Taxes .....	16
Section 2.14   Appraisal Rights .....	16
ARTICLE III     REPRESENTATIONS AND WARRANTIES OF THE COMPANY .....	17
Section 3.1    Organization and Qualification .....	17
Section 3.2    Capitalization .....	17
Section 3.3    Authorization and Validity of Agreement .....	18
Section 3.4    Consents and Approvals .....	18
Section 3.5    No Violations .....	18
Section 3.6    Financial Statements; Undisclosed Liabilities .....	19
Section 3.7    Compliance with Law .....	19
Section 3.8    Litigation .....	20
Section 3.9    Employees and Employee Benefit Matters .....	20
Section 3.10   Taxes .....	22
Section 3.11   Material Contracts .....	23
Section 3.12   Brokers and Finders .....	24
Section 3.13   Absence of Certain Changes .....	24
Section 3.14   Environmental Matters .....	25
Section 3.15   Related Transactions .....	26
Section 3.16   Real Property .....	26

Section 3.17	Insurance .....	27
Section 3.18	Bank Accounts .....	27
Section 3.19	Intellectual Property .....	27
Section 3.20	Exclusive Dealing .....	28
ARTICLE IV	REPRESENTATIONS AND WARRANTIES OF PURCHASER .....	28
Section 4.1	Organization and Qualification .....	28
Section 4.2	Authorization and Validity of Agreement .....	28
Section 4.3	Consents and Approvals .....	29
Section 4.4	No Violation .....	29
Section 4.5	Funding and Capitalization .....	29
Section 4.6	Brokers and Finders .....	30
Section 4.7	Physical Connection to Railroads .....	30
ARTICLE V	COVENANTS OF THE COMPANY .....	30
Section 5.1	Conduct of the Company .....	30
ARTICLE VI	POST CLOSING COVENANTS OF PURCHASER .....	33
Section 6.1	Continuation of Benefits Prior to Transfer of Benefits .....	33
Section 6.2	Recognition of Prior Service .....	33
Section 6.3	Medical Plan Provisions .....	34
Section 6.4	Indemnity .....	34
Section 6.5	Removal of "RailNet" Portion of Company Name .....	34
Section 6.6	Additional Payments .....	35
Section 6.7	Tax Election .....	35
ARTICLE VII	COVENANTS OF PURCHASER AND THE COMPANY .....	35
Section 7.1	Access to Information .....	35
Section 7.2	Reasonable Efforts .....	36
Section 7.3	Certain Filings .....	36
Section 7.4	Public Announcements .....	37
Section 7.5	Notices of Certain Events .....	37
Section 7.6	Implied Warranties .....	37
Section 7.7	Knowledge of Breach .....	37
Section 7.8	Stockholders' Representative .....	37
Section 7.9	Disclosure Schedules .....	38
Section 7.10	Consents .....	38
Section 7.11	Contribution and Transfer Agreement .....	38

ARTICLE VIII	SURVIVAL; INDEMNIFICATION.....	38
Section 8.1	Indemnification Obligations of Seller.....	38
Section 8.2	Indemnification Obligations of Purchaser .....	40
Section 8.3	Indemnification Procedure.....	40
Section 8.4	Survival Period.....	41
Section 8.5	Liability Limits.....	41
Section 8.6	Exclusive Remedies .....	42
Section 8.7	Indemnification Amounts .....	42
ARTICLE IX	CONDITIONS TO THE MERGER.....	42
Section 9.1	Conditions to Obligations of Each Party.....	42
Section 9.2	Conditions Precedent to the Obligations of the Company.....	43
Section 9.3	Conditions Precedent to the Obligations of Purchaser.....	43
ARTICLE X	TERMINATION .....	45
Section 10.1	Termination.....	45
Section 10.2	Effect of Termination.....	45
ARTICLE XI	MISCELLANEOUS .....	45
Section 11.1	Notices .....	45
Section 11.2	Entire Agreement .....	47
Section 11.3	Assignment; Binding Effect.....	47
Section 11.4	Fees and Expenses .....	47
Section 11.5	Amendments .....	47
Section 11.6	Waivers .....	47
Section 11.7	Severability .....	47
Section 11.8	Captions .....	48
Section 11.9	Counterparts.....	48
Section 11.10	Governing Law .....	48
Section 11.11	Limitations of Remedies; CERCLA Waiver .....	48
Section 11.12	Legal Representation.....	48
Section 11.13	Jurisdiction; Venue; Services of Process .....	49

## Exhibits

- Exhibit A – Escrow Agreement
- Exhibit B – List of Stockholders
- Exhibit C – Form of Solvency Certificate
- Exhibit D – Form of GDOT Term Sheet
- Exhibit E – Form of Contribution and Transfer Agreement

## AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER ("Agreement") is made and entered into as of March 25, 2005, by and among North American RailNet, Inc., a Delaware corporation (the "Company"), OmniTRAX, Inc. a Colorado corporation ("Purchaser") and RN Rail Holdings, Inc., a Delaware corporation wholly owned by Purchaser ("Merger Sub").

### RECITALS

WHEREAS, the respective Boards of Directors of the Company and Merger Sub have determined that the merger of Merger Sub with and into the Company (the "Merger"), upon the terms and subject to the conditions set forth in this Agreement, would be fair and in the best interests of the current Stockholders and the stockholders of Merger Sub, respectively;

WHEREAS, concurrently with the execution of this Agreement, certain Stockholders of the Company Stock have executed written consents approving the Merger and the transactions contemplated hereby (a copy of which has been delivered to the Purchaser);

WHEREAS, Purchaser and the Company desire to make, and have relied upon, certain representations, warranties, covenants and agreements in connection with the transactions contemplated hereby.

NOW, THEREFORE, in consideration of the foregoing, and of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.1 Defined Terms. When used in this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" means, with respect to any specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person, including, without limitation, each Subsidiary of such specified Person. For the purposes of this definition, "control", when used with respect to any specified Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through ownership of voting securities or by contract, credit arrangement or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" has the meaning set forth in the Preamble.

"Alberta RailNet" means Alberta RailNet, Inc., a wholly owned Subsidiary of the Company on the date hereof.

"Alberta RailNet Transaction" mean the proposed sale of 100% of the equity of Alberta RailNet by RailNet Holdings, which transaction is expected to close subsequent to the date hereof.

"Alternative Transaction" means, with respect to the Company and any Company Subsidiaries, any transaction or series of related transactions involving (a) the sale of all or substantially all of the assets of the Company or any Company Subsidiary, (b) the sale of such number of shares of capital stock of the Company entitling the holder thereof to elect a majority of the members of the board of directors of the Company or (c) a merger, consolidation, recapitalization or similar transaction involving the Company in which the beneficial owners of capital stock of the Company immediately prior to such transaction do not beneficially own, immediately after the consummation of such transaction, sufficient shares of capital stock of the Company entitling them to elect a majority of the members of the board of directors of the Company.

"Arbiter" has the meaning set forth in Section 2.4(b).

"Business Day" means a day other than a Saturday, Sunday or a day on which commercial banks are authorized or required to close in New York City, New York.

"Closing" has the meaning set forth in Section 2.2.

"Closing Date" has the meaning set forth in Section 2.2.

"Closing Working Capital" shall mean the Working Capital of the Company as of the close of business April 30, 2005, or if the closing occurs subsequent to May 2, 2005, as of the close of business on the day immediately preceding the Closing Date as reflected on the Final Closing Working Capital Report.

"Closing Working Capital Report" has the meaning set forth in Section 2.4(a).

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Company" has the meaning set forth in the Preamble.

"Company Benefit Plans" means all written material Employee Benefit Plans sponsored, contributed to or maintained by the Company or any Company Subsidiary for the benefit of current or former employees of the Company or any Company Subsidiary.

"Company Disclosure Schedule" means the Disclosure Schedule delivered by the Company to Purchaser simultaneously with the execution and delivery of this Agreement, as amended from time to time pursuant to Section 7.9.

"Company Expenses" has the meaning set forth in Section 2.12.

"Company Stock" has the meaning set forth in Section 2.9(b).

"Company Subsidiary" means Georgia & Florida RailNet, Inc., a Delaware corporation, Illinois RailNet, Inc., a Delaware corporation and Nebraska, Kansas & Colorado RailNet, Inc., a Delaware corporation.

"Company's Organizational Documents" has the meaning set forth in Section 3.1.

"Confidentiality Agreement" means the letter agreement dated as of September 7, 2004 between Purchaser and Robert W. Baird & Co. acting as agent for the Company.

"Continuation Period" has the meaning set forth in Section 6.1(a).

"Contract" means any written note, bond, mortgage, indenture, lease, contract, agreement, obligation or commitment.

"Contribution and Transfer Agreement" meaning the Contribution and Transfer Agreement on terms no less favorable to the Company in the aggregate than as set forth in the form of agreement attached hereto as Exhibit E to be entered into between the Company and RailNet Holdings prior to the Effective Time pursuant to which all of the capital stock of Alberta RailNet and all of the assets (other than the books and records relating to the Company and the Company Subsidiaries) of the Company located in Dallas, Texas will be contributed by the Company to RailNet Holdings in consideration for the issuance of the capital stock of RailNet Holdings.

"Dallas Office Lease" means the Central Park Office Lease entered into on or about October 6, 1998, as amended, between the Company and Shops Central, L.P. for suite 300, 2350 Airport Freeway, Bedford, Texas.

"Deductible Amount" has the meaning set forth in Section 8.5(a).

"DGCL" has the meaning set forth in Section 2.1.

"Dissenting Stockholders" has the meaning set forth in Section 2.14.

"Effective Time" has the meaning set forth in Section 2.3.

"Employee Benefit Plan" means each plan, program, policy, payroll practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, performance awards, stock or stock-related awards, fringe benefits or other employee benefits of any kind to or for the benefit of employees of the Company or any Company Subsidiary, including, without limitation, each "employee benefit plan", within the meaning of Section 3(3) of ERISA.

"Environmental Laws" means, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq.,

and the Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251 et seq., all rules and regulations promulgated pursuant to any of the above statutes, and any other applicable federal, state or local law, statute, ordinance, rule or regulation governing, or common law cause of action with respect to, Environmental Matters, in each case as in effect at the Closing Date.

"Environmental Matters" means any matters arising out of or relating to health and safety, or pollution or protection of the environment or workplace, including, without limitation, any of the foregoing relating to the use, generation, transport, treatment, storage, or disposal of any Hazardous Substances.

"Environmental Permits" has the meaning set forth in Section 3.14(b)(ii).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any entity which, together with the Company or any Company Subsidiary, would be treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

"Escrow Agent" means JPMorgan Chase Bank or such other person appointed by the Stockholders' Representative (with the consent of the Purchaser, such consent not to be unreasonably withheld) to act as escrow agent under the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement substantially in the form attached hereto as Exhibit A among Purchaser, the Escrow Agent and the Stockholders' Representative, with only such changes as the Escrow Agent may reasonably request.

"Escrow Amount" means the amount of Redacted, which shall be deposited with the Escrow Agent and held and distributed by the Escrow Agent under the terms of the Escrow Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Final Closing Working Capital Report" shall mean, with respect to any party, the Closing Working Capital Report which has become conclusive and binding upon such party pursuant to Section 2.4(b).

"Financial Statements" means, (i) with respect to the Company: (a) the audited balance sheet, statement of income, statement of shareholders' equity and statement of cash flows for the Company for the years ended December 31, 2002 and December 31, 2003, (b) the unaudited balance sheet, statement of income, statement of shareholders' equity and statement of cash flows for the Company for the twelve months ended December 31, 2004, and (c) the unaudited balance sheet, statement of income, statement of shareholders' equity and statement of cash flows for the Company for the one month ended January 31, 2005 and, (ii) with respect to each Company Subsidiary: the unaudited balance sheet, statement of income, statement of shareholders' equity and statement of cash flows for each such Company Subsidiary for the years



ended December 31, 2002, December 31, 2003 and December 31, 2004, and the one month ended January 31, 2005. The term Financial Statements shall exclude any other financial statements delivered by the Company subsequent to the date hereof in accordance with the provisions of Section 5.1(m) not referenced above.

"GAAP" means United States generally accepted accounting principles and practices as in effect from time to time and applied consistently throughout the periods involved.

"GDOT" has the meaning set forth in Section 5.1(q).

"GDOT Term Sheet" has the meaning set forth in Section 5.1(q).

"Governmental Entity" means any government or any court, arbitral tribunal, administrative agency or commission or other governmental or other regulatory authority or agency, federal, state, local or foreign.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Entity.

"Hazardous Substance" means any material defined as a "hazardous substance" or "hazardous waste" under any Environmental Law.

"Indebtedness" means the Senior Indebtedness.

"Indemnified Party" means the Company or Purchaser, as the case may be.

"Indemnifying Party" has the meaning set forth in Section 8.3(a).

"IRS" means the Internal Revenue Service.

"Knowledge of the Company" means the actual knowledge of Redacted

"Knowledge of the Purchaser" means the actual knowledge of Redacted

"Last Balance Sheet Date" means January 31, 2005.

"Leased Real Property" means the real property leased by the Company or any Company Subsidiary, as tenant, together with, to the extent leased by the Company or any Company Subsidiary, as tenant, all buildings and other structures, facilities or improvements currently located thereon, all fixtures, systems and equipment attached or appurtenant thereto.

"Liabilities" means any and all debts, liabilities, and damages, including those arising under any law, Proceeding or Governmental Order and those arising under any Contract.

"Lien" means any material adverse claim, restriction on voting or transfer or pledge, mortgage, lien (including, without limitation, environmental and tax liens), charge, encumbrance, restriction or security interest of any kind.

"Loss" has the meaning set forth in Section 8.1(a).

"Management Notes" means [Redacted]

"Management Pledged Shares" means those shares of Company Stock pledged pursuant to the Pledge Agreements.

"Material Adverse Effect" means:

(a) with respect to the Company, a material adverse effect on the business, results of operations or financial condition of the Company and the Company Subsidiaries, taken as a whole, other than effects caused by (i) events, changes or developments relating to the economy in general or resulting from industry-wide developments affecting companies in similar businesses, or (ii) the disclosure of this Agreement or the transactions contemplated by this Agreement.

(b) with respect to a Company Subsidiary, a material adverse effect on the business, results of operations or financial condition of the Company Subsidiary, other than effects caused by (i) events, changes or developments relating to the economy in general or resulting from industry-wide developments affecting companies in similar businesses, or (ii) the disclosure of this Agreement or the transactions contemplated by this Agreement.

"Material Contracts" has the meaning set forth in Section 3.11.

"Material IP" has the meaning set forth in Section 3.19(a).

"Materiality Threshold" means [Redacted]

"Merger" has the meaning set forth in the Recitals.

"Merger Cash Consideration" means [Redacted]

"Merger Consideration" means [Redacted]

"Merger Sub" has the meaning set forth in the Preamble.

"Objection Notice" has the meaning in Section 2.4(b).

"Other Filings" means any filings required to be filed by the Company or Purchaser with any Governmental Entity under the Securities Act, the Exchange Act, any stock exchange rule or any other federal, state, local or foreign laws in connection with the transactions contemplated hereby.

"Owned Real Property" means the real property owned by the Company or any Company Subsidiary, together with all buildings and other structures, facilities or improvements currently located thereon, all fixtures, systems and equipment of the Company or any Company Subsidiary attached or appurtenant thereto and all easements, licenses, rights and appurtenances relating to the foregoing.

"Permit" means any license, franchise, permit, consent, concession, order, approval, authorization or registration from, of or with a Governmental Entity.

"Permitted Liens" means such of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced: (a) Liens for taxes, assessments and governmental charges or levies not yet delinquent or for which adequate reserves are maintained on the financial statements of the Company and the Company Subsidiaries in conformity with GAAP, and which are reflected in the calculation of the Closing Working Capital to the extent required by GAAP; (b) Liens imposed by law, such as materialmen's, mechanics', carriers', workmen's and repairmen's liens and other similar liens arising in the ordinary course of business securing obligations that are not overdue for a period of more than 60 days or which are being contested in good faith by appropriate proceedings (and for which adequate reserves are maintained on the financial statements of the Company and the Company Subsidiaries in conformity with GAAP and are reflected in the calculation of Closing Working Capital to the extent required by GAAP); (c) pledges or deposits to secure obligations under workers' compensation laws or similar legislation or to secure public or statutory obligations, all of which are reflected in the books and records of the Company and the Company Subsidiaries in conformity with GAAP; (d) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business consistent with past practice, all of which are reflected in the books and records of the Company and the Company Subsidiaries in conformity with GAAP, (e) all matters of record, including, without limitation, survey exceptions, reciprocal easement agreements and other encumbrances on title to real property, none of which, to the Knowledge of the Company, unreasonably interferes with the operation (in the ordinary course and consistent with past practices) of any Railroad, (f) all applicable zoning, entitlement, conservation restrictions and other land use and environmental regulations, (g) all exceptions, restrictions, easements, charges, rights-of-way and other Liens set forth in any Permits or other state, local or municipal franchise applicable to the Company or any Company Subsidiary or any of their respective properties, (h) Liens securing the obligations of the Company and the Company Subsidiaries under the Senior

Indebtedness (all of which shall be discharged at or in connection with Closing as set forth in Section 2.11), and (i) Liens referred to in the Company Disclosure Schedule.

"Per Non-Pledged Share Cash Consideration" has the meaning set forth in Section 2.9(b).

"Per Non-Pledged Share Stock Consideration" has the meaning set forth in Section 2.9(b).

"Person" means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a Governmental Entity.

"Pledge Agreements" means [Redacted]

"Policies" has the meaning set forth in Section 3.17(a).

"Proceedings" has the meaning set forth in Section 3.14(b)(iii).

"Purchase Price Adjustment" has the meaning set forth in Section 2.4(c).

"Purchaser" has the meaning set forth in the Preamble.

"Railroad" means any railroad owned or controlled by the Company or any Company Subsidiary.

"RailNet Holdings" means RailNet Holdings, Inc.

"Real Property" means, collectively, the Leased Real Property and the Owned Real Property.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Senior Indebtedness" has the meaning set forth in Section 2.11.

"Stated Purchase Price" has the meaning set forth in the definition of Merger Cash Consideration.

"STB" means the Surface Transportation Board of the United States Department of Transportation.

"Stockholders" means all of the stockholders of the Company, all of whom are listed on Exhibit B.

**"Stockholders' Representative"** means the Person nominated by the Stockholders to act in such capacity from time to time pursuant to the Stockholders Closing Agreement, dated the date hereof, among the Stockholders.

**"Subsidiary"** means, with respect to any Person, any corporation, limited liability company, partnership, joint venture, or other legal entity of which such Person (either above or through or together with any other Subsidiary) owns, directly or indirectly, more than 50% of the stock or other equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

**"Surviving Corporation"** has the meaning set forth in Section 2.1.

**"Tax"** means any net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, withholding, payroll, employment, excise, severance, stamp, capital stock, occupation, property, environmental or windfall profits tax, or other like assessment or charge of any kind whatsoever, together with any interest, penalty, addition to tax or additional amount imposed by any tax authority responsible for the imposition of any such tax (domestic or foreign).

**"Tax Return"** means any return, declaration or information return relating to Tax, including any schedule or attachment thereto, and including any amendment thereto, required to be filed with any tax authority.

**"Termination Date"** means [Redacted]

**"Transfer Taxes"** has the meaning set forth in Section 2.13.

**"Working Capital"** means (i) the current assets of the Company, including accounts receivable, inventories, and prepaid expenses but excluding cash and cash equivalents; less (ii) the current liabilities of the Company, including accounts payable, accrued expenses and prepaid revenue (but excluding the current portion of the Senior Indebtedness, the Company Expenses and any amounts due to or receivable from any Stockholder or any Affiliate of a Stockholder), each as determined in accordance with GAAP applied on a basis consistent with the basis on which GAAP was applied in connection with the Financial Statements. For clarification, contingent liabilities and accruals for pending or threatened litigation or other claims and the deductible amounts for any insured incidents that are not currently included in the Financial Statements prepared in accordance with GAAP applied on a basis consistent with the basis on which GAAP was applied in connection with the Financial Statements shall not be included in the computation of Working Capital. In addition, amounts received by or due to the Company in connection with the closing of the transaction contemplated by the GDOT Term Sheet shall not be included as current assets.

Section 1.2 **Interpretation**. Meanings specified in this Agreement shall be applicable to both the singular and plural forms of such terms and to the masculine, feminine and neuter genders, as the context requires and the words "include", "includes" or "including" shall be deemed to be followed by the words "without limitation".

## ARTICLE II

### THE MERGER

Section 2.1 The Merger. Upon the terms and subject to the conditions of this Agreement and in accordance with the Delaware General Corporation Law (the "DGCL"), at the Effective Time, Merger Sub shall be merged with and into the Company and the separate corporate existence of Merger Sub shall thereupon cease. The Company shall be the surviving corporation in the Merger (the Company in its capacity as the surviving corporation is sometimes hereinafter referred to as the "Surviving Corporation") and the Surviving Corporation shall have the name "North American RailNet, Inc." The Merger shall have the effects specified in the DGCL.

Section 2.2 Closing. Unless this Agreement is sooner terminated as provided in Article X, upon the terms and subject to the conditions set forth in this Agreement, the closing of the Merger (the "Closing") shall take place at the offices of Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004, at 9:00 a.m. local time, on [Redacted], or as soon thereafter as practicable following the day on which the last to be fulfilled or waived of the conditions set forth in Article IX (other than those conditions that by their nature are to be fulfilled at the Closing, but subject to the fulfillment of such conditions) shall be fulfilled or waived in accordance herewith, or at such other time or date as the parties hereto may agree. The date on which the Closing shall occur is hereinafter referred to as the "Closing Date".

Section 2.3 Effective Time. If all the conditions to the Merger set forth in Article IX shall have been fulfilled or waived in accordance herewith and this Agreement shall not have been terminated as provided in Article X, the parties hereto shall cause a Certificate of Merger meeting the requirements of Section 251 of the DGCL to be properly executed and filed in accordance with such Section on the Closing Date. The Merger shall become effective at the time of filing of the Certificate of Merger with the Secretary of State of the State of Delaware in accordance with the DGCL or at such later time which the parties shall have agreed upon and designated in such filing as the effective time of the Merger (the "Effective Time").

Section 2.4 Closing Working Capital Report; Purchase Price Adjustment. (a) Within 60 days following the Closing Date, the Stockholders' Representative, at its sole cost, shall prepare and deliver to Purchaser an unaudited report of the Working Capital of the Company as of the close of business on [Redacted], as of the close of business on the day immediately preceding the Closing Date (the "Closing Working Capital Report"). The Closing Working Capital Report shall also contain accruals and deferrals to take into account the pro ration of expenses for the periods prior to and following the Effective Time. There shall be attached to the Closing Working Capital Report an annex setting forth in reasonable detail the computation of the Purchase Price Adjustment, if any.

(b) The Closing Working Capital Report delivered by the Stockholders' Representative to Purchaser and the computation of the Purchase Price Adjustment annexed thereto shall be conclusive and binding upon the parties unless Purchaser, within 30 days after

the delivery to Purchaser of the Closing Working Capital Report, notifies the Stockholders' Representative in writing (the "Objection Notice") that Purchaser disputes any of the amounts set forth therein, specifying the disputed items in detail and the basis therefor. Any items in the Closing Working Capital Report that are not objected to by Purchaser in the Objection Notice shall be deemed approved by Purchaser. Purchaser and the Stockholders' Representative shall in good faith attempt to resolve any disputed items in the Objection Notice. If Purchaser and the Stockholders' Representative resolve the disputed items in the Objection Notice then the Closing Working Capital Report and the computation of the Purchase Price Adjustment, as amended to the extent necessary to reflect the resolution of the disputed items in the Objection Notice, shall be conclusive and binding upon Purchaser and Stockholders' Representative. If Purchaser and Stockholders' Representative do not reach agreement resolving the dispute within 10 Business Days after Stockholders' Representative's receipt of the Objection Notice, Purchaser and the Stockholders' Representative shall submit the dispute to an audit partner (with experience in railroad accounting) with a nationally recognized independent accounting firm mutually agreeable to the parties, which firm shall not have had a material relationship with Purchaser, any Stockholder or their respective affiliates within the two years preceding the appointment (the "Arbiter"), for resolution. If the parties cannot agree on the selection of a partner at an independent accounting firm to act as Arbiter, either Purchaser or Stockholders' Representative shall have the right to request the American Arbitration Association to appoint such a partner, and such appointment shall be conclusive and binding upon the parties. Promptly, but no later than 20 Business Days after its acceptance of his or her appointment as Arbiter, the Arbiter shall determine, based solely on presentations by Purchaser and the Stockholders' Representative, and not by independent review, only those issues in dispute as specified in the Objection Notice and shall render a report as to the dispute and the resulting computation of the Closing Working Capital Report and the Purchase Price Adjustment, if any, which shall be conclusive and binding upon Purchaser and the Stockholders' Representative. All proceedings conducted by the Arbiter shall take place in the City of Dallas, Texas. In resolving any disputed item, the Arbiter (x) shall be bound by the provisions of Section 2.4(c) of this Agreement and (y) may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party, but shall not be required to resolve the dispute by agreeing with the position taken by either Purchaser or Stockholders' Representative. The fees, costs and expenses of the Arbiter (i) shall be borne by Purchaser in the proportion that the aggregate dollar amount of such disputed items so submitted that are unsuccessfully disputed by Purchaser (as finally determined by the Arbiter) bears to the aggregate dollar amount of such items so submitted and (ii) shall be paid from the funds escrowed pursuant Escrow Agreement in the proportion that the aggregate dollar amount of such disputed items so submitted that are successfully disputed by Purchaser (as finally determined by the Arbiter) bears to the aggregate dollar amount of such items so submitted. Whether any dispute is resolved by agreement among the parties or by the Arbiter, changes to the Closing Working Capital Report shall be made hereunder only for items as to which Purchaser has taken exception as provided herein. Purchaser and the Stockholders each shall make available to the other (upon the request of the other) their respective work papers generated in connection with the preparation or review of the Closing Working Capital Report.

(c) The difference, if any, between the Closing Working Capital and [Redacted], whether a positive or negative number, is herein referred to as the "Purchase Price Adjustment." If the Closing Working Capital exceeds [Redacted] the dollar amount of the Purchase Price Adjustment shall be paid by Purchaser to Stockholders in accordance with the provisions of Section 2.4(d) of this Agreement [Redacted], then Purchaser pays [Redacted] If Closing Working Capital is [Redacted], the Purchaser pays [Redacted]. If the Closing Working Capital is [Redacted], the dollar amount of the Purchase Price Adjustment shall be paid by the Escrow Agent to Purchaser in accordance with the provisions of Section 2.4(e) of this Agreement [Redacted]

(d) Any amounts payable by Purchaser under this Section 2.4 shall be payable in cash to Stockholders' Representative on the third Business Day following (A) the last day on which Purchaser may deliver the Objection Notice, if Purchaser does not deliver an Objection Notice by such last day, or such earlier date as Purchaser shall advise the Stockholders of the absence of any dispute, or (B) in the event of any such dispute, (i) the date mutual agreement is reached as to the amount of the Purchase Price Adjustment, if any, in the event of a dispute that is settled by Purchaser and the Stockholders' Representative without resort to the Arbiter, or (ii) the date of receipt of the report of the Arbiter in the event of a dispute which is settled by the Arbiter, as applicable.

(e) Notwithstanding anything to the contrary, Purchaser's sole remedy for any payment due from the Stockholders under this Section 2.4 shall be from the Escrow Agent pursuant to the terms of the Escrow Agreement. To facilitate the payment by the Escrow Agent, of any amounts payable to Purchaser under this Section 2.4, the Stockholders' Representative and Purchaser shall execute a valid Working Capital Notice (as defined in the Escrow Agreement) on the third Business Day following (A) the last day on which Purchaser may deliver the Objection Notice, if Purchaser does not deliver an Objection Notice by such last day, or such earlier date as Purchaser shall advise the Stockholders of the absence of any dispute, or (B) in the event of any such dispute, (i) the date mutual agreement is reached as to the amount of the Purchase Price Adjustment, if any, in the event of a dispute that is settled by Purchaser and the Stockholders' Representative without resort to the Arbiter, or (ii) the date of receipt of the report of the Arbiter in the event of a dispute which is settled by the Arbiter, as applicable.

(f) Purchaser shall provide the Stockholders' Representative and its advisors, full access to all relevant books and records and to employees of the Company to the extent necessary to prepare the Closing Working Capital Report and in connection with any items in dispute with respect to the Closing Working Capital Report. Such access shall be provided during regular business hours and upon reasonable notice. The Stockholders' Representative shall endeavor to cause minimal disruption to the business of the Company. All such access of the Stockholders' Representative shall be coordinated through designated representatives of Purchaser.

Section 2.5 Articles of Incorporation. The certificate of incorporation of the Surviving Corporation in effect at the Effective Time shall, at the Effective Time, be amended to conform to the certificate of incorporation of Merger Sub (including the authorization of only one class of capital stock) until duly amended in accordance with the terms thereof and the DGCL.



Section 2.6 Bylaws. The bylaws of the Surviving Corporation in effect at the Effective Time shall, at the Effective Time, be amended to conform to the bylaws of Merger Sub until duly amended in accordance with the terms thereof and the DGCL.

Section 2.7 Directors of the Surviving Corporation. As of the Effective Time, the directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation, to serve until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be. Immediately following the Effective Time, the directors of the Surviving Corporation shall resign, and the directors of Merger Sub immediately prior to the Effective Time shall be appointed as new directors of the Company.

Section 2.8 Officers of the Surviving Corporation. As of the Effective Time, the officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation, to serve until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be. Immediately following the Effective Time, the officers of the Surviving Corporation shall resign, and the officers of Merger Sub immediately prior to the Effective Time shall be appointed as new officers of the Company.

Section 2.9 Effect of Merger on Capital Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of the capital stock of the Company or any shares of the capital stock of Merger Sub:

(a) Each share of common stock, \$0.01 par value, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one fully paid and non-assessable share of voting common stock, \$0.01 par value, of the Surviving Corporation.

(b) Except as otherwise provided herein, each share of common stock and each share of series A preferred stock of the Company ("Company Stock") issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive from the Surviving Corporation upon the consummation of the Merger the Merger Consideration comprised of the following: (A) with respect to all Company Stock, other than the Management Pledged Shares, (I) an equivalent number of shares of common stock or series A preferred stock of RailNet Holdings (the "Per Non-Pledged Share Stock Consideration"), as applicable, such amount described on Exhibit B in respect of each Person entitled to receive such Shares, and (II) an amount equal to the quotient of (i) the Merger Cash Consideration divided by (ii) the number of shares of Company Stock outstanding immediately prior to the Effective Time other than the Management Pledged Shares (such quotient, the "Per Non-Pledged Share Cash Consideration"), and (B) with respect to the Management Pledged Shares held by a Person, the Management Pledged Shares shall be forfeited in consideration for the cancellation of the Management Notes as provided below (it being agreed that the obligations under the Management Notes exceeds the amount that would otherwise be received absent the existence of the Management Notes).

(c) At the Closing, and as of the Effective Time, Company shall deposit the Escrow Amount with the Escrow Agent to be held and disbursed pursuant to the terms of the Escrow Agreement.

(d) Subject to Section 2.10(a), an amount equal to: (i) the product of (x) Per Non-Pledged Share Cash Consideration payable to each applicable Stockholder, multiplied by (y) the number of shares of Company Stock owned by the applicable Stockholder, minus (ii) the applicable Stockholder's pro rata portion of the Escrow Amount shall be paid to each applicable Stockholder solely in cash at the Closing.

(e) As of the Effective Time, all shares of Company Stock issued and outstanding immediately prior to the Effective Time shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Stock shall cease to have any rights with respect thereto, except the right to receive the Per Non-Pledged Share Cash Consideration and the Per Non-Pledged Share Stock Consideration upon surrender of such certificate in accordance with this Section 2.9 and Section 2.10.

(f) Notwithstanding anything in this Agreement to the contrary, shares of Company Stock issued and outstanding immediately prior to the Effective Time held by a holder (if any) who has the right to demand payment for and an appraisal of such shares in accordance with the DGCL shall not be converted into a right to receive the Per Non-Pledged Share Cash Consideration and the Per Non-Pledged Share Stock Consideration unless such holder fails to perfect or otherwise loses such holder's right to such payment or appraisal, if any.

(g) With respect to the Management Pledged Shares, upon surrender of the share certificates as provided for in Section 2.10 by any Person holding Management Pledged Shares, (i) the Management Notes will terminate and all amounts outstanding shall be deemed to have been repaid in full in lieu of the payment of any Merger Consideration (which deemed payment shall constitute payment in full of all indebtedness and obligations pursuant to the Management Notes), (ii) all security interests and liens granted pursuant to the Pledge Agreements shall be released automatically and without further act and the Pledge Agreements shall be terminated and (iii) the holder of Management Pledged Shares and its counsel will be authorized and directed, without the requirement of any further notice, to file all lien releases, including, without limitation, Uniform Commercial Code financing statement amendments or termination statements, that are necessary to release all security interests and liens granted pursuant to the Pledge Agreements, in each case without the signature of the counterparties to the Pledge Agreements, to the extent permitted by law.

Section 2.10 Exchange of Certificates. (a) On or after the Effective Time, each holder of an outstanding certificate or certificates which prior thereto represented shares of Company Stock shall surrender to the Surviving Corporation the certificate or certificates representing such shares of Company Stock and, upon acceptance thereof by the Surviving Corporation, be entitled to the amount of cash and shares of RailNet Holdings into which such holder's shares of Company Stock have been converted pursuant to this Agreement. The Company shall request each Stockholder to submit to the Company, not later than five Business

Days prior to the Effective Time, instructions for delivery of the applicable portion of the Per Non-Pledged Share Cash Consideration payable at the Closing and all of the shares of RailNet Holdings shall be delivered to the Stockholders' Representative for distribution to the Stockholders as provided herein. No later than three Business Days prior to the Effective Time the Stockholders' Representative shall deliver to Purchaser a schedule setting forth how the Merger Cash Consideration will be distributed, including wire instructions in the case of cash payments to be made at the Effective Time by wire transfer such determination to be binding (i.e., payment of such amounts shall satisfy Purchaser's obligation to pay the Merger Cash Consideration under Section 2.9). After the Effective Time, there shall be no further transfer on the records of the Company or its transfer agent of certificates representing shares of Company Stock which have been converted, in whole or in part, pursuant to this Agreement into the right to receive cash and if such certificates are presented to the Surviving Corporation for transfer, they shall be canceled against delivery of cash. Until surrendered as contemplated by this Section 2.10(a), each certificate for shares of Company Stock shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Per Non-Pledged Share Cash Consideration and the Per Non-Pledged Share Stock Consideration as contemplated by Section 2.9(b). No interest will be paid or will accrue on any amounts payable as Per Non-Pledged Share Cash Consideration.

(b) No dividends or other distributions with respect to Company Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered certificate for shares of Company Stock with respect to the shares of Company Stock represented thereby.

(c) Neither Purchaser nor the Company shall be liable to any Person in respect of any shares of retained Company Stock (or dividends or distributions with respect thereto) or the Per Non-Pledged Share Cash Consideration or the Per Non-Pledged Share Stock Consideration required to be delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

(d) If any consideration is to be paid to a Person other than the Person in whose name the certificate surrendered in exchange therefor is registered, it shall be a condition to such exchange that the Person requesting such exchange shall pay to the Surviving Corporation any Transfer Taxes or other Taxes required by reason of the payment of such consideration to a Person other than that of the registered holder of the certificate so surrendered, or such person shall establish to the reasonable satisfaction of the Surviving Corporation that such Tax has been paid or is not applicable.

(e) If any certificate for shares of Company Stock shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed the Surviving Corporation will pay, in exchange for such lost, stolen or destroyed certificate, the Per Non-Pledged Share Cash Consideration and the Per Non-Pledged Share Stock Consideration to be paid in respect of the shares of Company Stock represented by such certificate. The affidavit shall provide for indemnification of the Company on such terms as are reasonably acceptable to Purchaser.

Section 2.11 Payment at Closing for Indebtedness under the Credit Agreement. As of the Closing Date, Purchaser and Merger Sub shall provide sufficient funds to the Company to enable the Company to repay in full the obligations of the Company [Redacted]

1. Immediately prior to the Effective Time, the Company shall settle the Senior Indebtedness in full. On or prior to the second Business Day prior to the Effective Time, the Company shall deliver to Purchaser a copy of a customary pay-off letter with respect to the Senior Indebtedness and shall have made arrangements reasonably satisfactory to Purchaser and Purchaser's lender for the release of all Liens securing such Senior Indebtedness.

Section 2.12 Payments at Closing for Expenses. As of the Closing Date, Purchaser and Merger Sub shall provide sufficient funds to the Surviving Corporation to enable the Surviving Corporation to pay all outstanding fees and expenses of the Company and each of its Subsidiaries in connection with the negotiation and the consummation of the transactions contemplated hereby that have not been paid on or prior to the Closing Date (the "Company Expenses"). The Company shall notify Purchaser of the amount of such fees and expenses prior to the Closing Date.

Section 2.13 Transfer Taxes. The Surviving Corporation shall be liable for and pay all sales, use, transfer, real property transfer, documentary, recording, gains, stock transfer and similar Taxes and fees, and any deficiency, interest or penalty asserted with respect thereof (collectively, "Transfer Taxes") arising out of or in connection with the transactions effected pursuant to this Agreement, half of which shall be accrued as an expense in determining the Closing Working Capital. The Company shall timely file all necessary documentation and Tax Returns with respect to such Transfer Taxes.

Section 2.14 Appraisal Rights. Holders of shares of Company Stock who have complied with all requirements for demanding and perfecting appraisal rights as set forth in Section 262 of the DGCL ("Dissenting Stockholders") are entitled to their rights under such laws. Each share of Company Stock held by Dissenting Stockholders shall not be converted into or represent the right to receive the Per Share Stock Consideration and the Per Share Cash Consideration. Dissenting Stockholders shall be entitled to receive payment of the appraised value of such shares held by them in accordance with the provisions of Section 262 of the DGCL. Each share of Company Stock held by holders who shall have failed to perfect or who effectively shall have withdrawn or lost their rights to appraisal of such shares under Section 262 shall thereupon be deemed to have been converted into and to have become exchangeable for, as of the Effective Time, the right to receive the Per Share Stock Consideration and the Per Share Cash Consideration, without any interest thereon, upon surrender, in the manner provided in Section 2.10, of the certificate or certificates that formerly evidenced such shares. The Company shall give Purchaser prompt written notice of any assertions of appraisal rights or withdrawals of assertions of appraisal rights, and any other instrument in respect thereof received by the Company.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Purchaser as of the date hereof and as of the Effective Time follows:

Section 3.1 Organization and Qualification. The Company and each of the Company Subsidiaries is duly formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, has the requisite power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted and is in good standing and duly qualified to do business in each jurisdiction in which the transaction of its business makes such qualification necessary, except where the failure to be so organized, existing, qualified and in good standing or to have such power or authority would not have a Material Adverse Effect on the Company. True and complete copies of the Company's and each of the Company Subsidiary's certificate of incorporation and by-laws (or if such Subsidiary is not a corporation, its organizational documents) (collectively, the "Company's Organizational Documents"), each as amended to date and currently in full force and effect, have been made available to Purchaser.

Section 3.2 Capitalization. (a) The authorized capital stock of the Company consists of 900,000 shares of Company Stock, of which 500,000 are designated as common stock and 400,000 are designated as series A preferred stock. As of the date of this Agreement, [Redacted] shares of Company Stock are issued and outstanding (consisting of [Redacted] shares of common stock par value \$0.01 per share and [Redacted] shares of series A preferred stock par value \$0.01 per share). All outstanding shares of Company Stock are validly issued, fully paid and non-assessable and are not subject to preemptive rights. Exhibit B sets forth a list, as of the date hereof, of the Stockholders and the number of shares of Company Stock held by each such Stockholder. Except as set forth in Section 3.2(a) of the Company Disclosure Schedule, there are no outstanding subscriptions, options, warrants, calls, rights, commitments or any other agreements (including under any employment agreements) to which the Company or any Company Subsidiary is a party or by which the Company or any Company Subsidiary is bound which obligate the Company to (i) issue, deliver or sell or cause to be issued, delivered or sold any additional shares of Company Stock or any other capital stock of the Company or any other securities convertible into, or exercisable or exchangeable for, or evidencing the right to subscribe for, any such shares of Company Stock or any other capital stock of the Company or (ii) purchase, redeem or otherwise acquire any shares of Company Stock or any other capital stock of the Company. Except as set forth in Section 3.2(a) of the Company Disclosure Schedule (all of which shall be terminated as of the Closing), to the Knowledge of the Company, there are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Company Stock.

(b) Except as set forth in Section 3.2(b) of the Company Disclosure Schedule, upon the consummation of the transactions contemplated hereby the Company will not have any Subsidiaries nor will it own, directly or indirectly, any capital stock or other proprietary interest in any Person. Except as set forth in Section 3.2(b) of the Company Disclosure Schedule all such

interests are owned by the Company and are held free and clear of all Liens, other than Permitted Liens.

Section 3.3 Authorization and Validity of Agreement. The Company has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby in accordance with the terms hereof. The Company has duly authorized the execution, delivery and performance of this Agreement and no other proceedings on the part of the board of directors of the Company or the Stockholders are necessary to authorize this Agreement or the transactions contemplated hereby. As of the date hereof, no Stockholder has exercised dissenters' rights under the applicable provisions of the DGCL. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity.

Section 3.4 Consents and Approvals. Neither the execution and delivery of this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby will require on the part of the Company, or any Company Subsidiary, any offer to purchase, consent, approval, authorization or permit of, or filing with, or notification to, any Governmental Entity or other person, except (a) approval or waiver by the STB, (b) as set forth in Section 3.4 of the Company Disclosure Schedule, (c) as provided for in Section 2.3 or (d) where the failure to make such offer to purchase or to obtain such consent, approval, authorization or permit, or to make such filing or notification, would not have a Material Adverse Effect on any Company Subsidiary or prevent the consummation of the transactions contemplated hereby.

Section 3.5 No Violations. Except as set forth in Section 3.5 of the Company Disclosure Schedule, neither the execution and delivery of this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby will (a) conflict with or violate the Company's Organizational Documents, (b) result in a violation or breach of, constitute a default (with or without notice or lapse of time, or both) under, give rise to any right of termination, cancellation or acceleration of, or result in the imposition of any Lien, other than a Permitted Lien, on any material assets or property of the Company or any Company Subsidiary pursuant to any Material Contract or other material obligation to which the Company or any Company Subsidiary is a party or by which the Company, any Company Subsidiary, or any material assets or properties of the Company or any Company Subsidiary are bound, except for such violations, breaches and defaults (or rights of termination, cancellation or acceleration or Lien) as to which requisite waivers or consents have been obtained or (c) assuming the consents, approvals, authorizations or permits and filings or notifications referred to in Section 3.4 and this Section 3.5 are duly and timely obtained or made, violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company or any of the Company Subsidiaries or any of their respective assets and properties, except for such conflicts, violations, breaches or defaults which would not in the aggregate have a Material Adverse Effect on any Company Subsidiary or prevent the consummation of the transactions contemplated hereby.

**Section 3.6 Financial Statements; Undisclosed Liabilities.** (a) True and complete copies of the Financial Statements have been previously made available to Purchaser. Each of the balance sheets included in the Financial Statements (including any related notes and schedules thereto) fairly presents, in all material respects, the financial position of the Company or the Company Subsidiary, as applicable, as of its date, and each of the statements of income and cash flow included in the Financial Statements (including any related notes and schedules thereto) fairly presents, in all material respects, the results of operations of the Company or the Company Subsidiary, as applicable, for the periods set forth therein, in each case in accordance with the books and records of the Company or the Company Subsidiary, as applicable, and GAAP (except that such Financial Statements which are unaudited do not contain all of the footnotes required under GAAP and are subject to normal and customary year-end adjustments).

(b) To the Knowledge of the Company, neither the Company nor any Company Subsidiary has any liability, whether absolute, accrued, contingent or otherwise, which is required to be disclosed on a balance sheet prepared in accordance with GAAP, other than (i) liabilities shown on a balance sheet contained in the Financial Statements of the Company or Company Subsidiary, or (ii) liabilities incurred in the ordinary course of business since the Last Balance Sheet Date.

(c) Except for such liabilities and obligations for which indemnification is provided pursuant to Section 8.1(a)(iii) of this Agreement, neither the Company nor any Company Subsidiary has any liabilities or obligations of any kind (including any continuing indemnification obligations or guarantees) relating to the Company's ownership or disposition of the stock and/or assets of Camas Prairie RailNet, Inc. or Mississippi & Tennessee RailNet, Inc.

(d) Except for such liabilities and obligations for which indemnification is provided pursuant to Section 8.1(a)(iii) of this Agreement, following the Effective Date, neither the Company nor any Company Subsidiary will have any liability or obligation of any kind relating to Alberta RailNet, including any indemnification obligations in connection with the Alberta RailNet Transaction not otherwise satisfied in full by the escrow contemplated by the Alberta RailNet Transaction.

(e) Except as set forth in Section 3.6 of the Company Disclosure Schedule, or for transactions, arrangements and other relationships otherwise specifically identified on the Financial Statements, none of the Company or any of its Subsidiaries has or is subject to any "Off-Balance Sheet Arrangement" (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act).

**Section 3.7 Compliance with Law.** (a) Except as set forth in Section 3.7(a) of the Company Disclosure Schedule,

(i) to the Knowledge of the Company, the Company and each of the Company Subsidiaries is conducting its business in compliance, in all material respects, with all laws, statutes, rules, regulations, decrees or orders of any Governmental Entity applicable to it and its properties; and

(ii) the Company and each of Company Subsidiaries holds all material permits necessary for the conduct of its business as it is now being conducted.

(b) Section 3.7(b) of the Company Disclosure Schedule lists:

(i) all of the citations, notices of violations, notices of investigation resulting in Liability to the Company or any Company Subsidiary, orders, consent orders, administrative or judicial enforcement proceedings from Governmental Entity received by the Company or any Company Subsidiary since January 1, 2001 relating to safety or health matters involving the business or operations of the Company or any Company Subsidiary;

(ii) the results of each federal or state health or safety inspection since January 1, 2001 relating to the Company or any Company Subsidiary, including any responses thereto filed by the Company or the Company Subsidiary;

(iii) a summary of each audit (including any audits by any insurance company or carrier) relating to the safety of the Company's or Company Subsidiary's operations (including any action plans prepared in response thereto) which, to the Knowledge of the Company, has been prepared since January 1, 2001; and

(iv) all slow orders currently in effect applicable to any Railroad operated by a Company Subsidiary.

#### Section 3.8 Litigation.

(a) Except as disclosed in Section 3.8 of the Company Disclosure Schedule, there are no claims, actions, proceedings or governmental investigations pending or, to the Knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries (including Alberta RailNet) which if adversely determined, would result in a Liability to the Company exceeding [Redacted] Without limiting the foregoing, as of the date hereof, to the knowledge of the Company, there have been no claims filed or threatened in writing against the Company under [Redacted]

(b) To the Knowledge of the Company, the Company and its Subsidiaries are not subject to any outstanding and unsatisfied order, writ, judgment, injunction or decree or settlement or consent agreement by or with a Governmental Entity.

#### Section 3.9 Employees and Employee Benefit Matters.

(a) Section 3.9(a) of the Company Disclosure Schedule sets forth a correct and complete list of all of the employees of the Company and the Company Subsidiaries.

(b) Except as set forth in Section 3.9(b) of the Company Disclosure Schedule, neither the Company nor any Company Subsidiary has any written or oral employment or



(ii) there are no unfair labor practice or labor arbitration proceedings pending or, to the Knowledge of the Company, threatened in writing against the Company or any Company Subsidiary;

(iii) except as reflected in the calculation of Closing Working Capital, neither the Company nor any Company Subsidiary is delinquent in payments to any of its employees, for any wages, salaries, commissions, bonuses or other direct compensation for any services performed by the date hereof or amounts required to be reimbursed by them to the date hereof;

(iv) the Company and each Company Subsidiary is in compliance, in all material respects, with all applicable federal, state and local laws, rules and regulations respecting employment, employment practices, labor, terms and conditions of employment and wages and hours;

(v) to the Knowledge of the Company, no labor union or labor union organization is presently seeking, or has sought within the past three years, to represent any of the Company's or any Company Subsidiary's employees; and

(vi) there is no labor strike, dispute, slowdown or stoppage actually pending, or, to the Knowledge of the Company, threatened against or involving the Company or any Company Subsidiary.

(g) There are no Company Benefit Plans that provide health, life insurance or other welfare benefits to retired or other terminated employees of the Company or a Company Subsidiary, other than continuation coverage required by COBRA.

(h) Neither the Company nor any Company Subsidiary has, or will have, any liability to any employee of Alberta RailNet, or to Alberta RailNet, as a result of any Employee Benefit Plan covering Alberta RailNet employees.

#### Section 3.10 Taxes.

(a) Except as set forth in Section 3.10 of the Company Disclosure Schedule:

(i) all Tax Returns required to be filed by or on behalf of the Company and/or its Subsidiaries have been filed (taking into account any extension of time to file) and all Taxes exceeding [Redacted] (in the aggregate) required to be paid have been paid (except for such Taxes as shall be accrued for payment in the Closing Working Capital Report);

(ii) there are no written proposed deficiencies or other written claims for unpaid Taxes received by the Company or any of its Subsidiaries;

(iii) all Taxes that the Company, or any of its Subsidiaries, is required to withhold or collect relating to compensation or benefits provided to employees have been duly withheld or collected and have been paid over, as required, to the appropriate taxing authority or will be accrued for payment in the Closing Working Capital Report;

(iv) there are no audits or proceedings in progress, nor to the Knowledge of the Company, pending with respect to Taxes of the Company or any of its Subsidiaries; and

(v) no waivers of statutes of limitations have been given with respect to any Taxes with respect to the Company or any Company Subsidiary, which waivers are in effect as of the date hereof.

(b) The Company has provided to Purchaser true and complete copies of the Company's federal and state income tax returns and each Company's Subsidiaries state income tax returns for the 2001, 2002 and 2003 calendar years.

Section 3.11 Material Contracts. (a) Section 3.11(a) of the Company Disclosure Schedule sets forth a true and complete list of all the Material Contracts to which the Company or any Company Subsidiary is a party that are outstanding or in effect on the date of this Agreement. As used herein, "Material Contracts" means all of the following:

(i) each agreement or arrangement of the Company or any Company Subsidiary that requires the payment or incurrence of Liabilities, or the rendering of services, by the Company or any Company Subsidiary, subsequent to the date of this Agreement of an amount equal to or greater than the Materiality Threshold per annum other than purchase orders with customers and vendors entered into in the ordinary course of business;

(ii) all Contracts relating to, or evidences of, or guarantees of, or providing security for, indebtedness or the deferred purchase price of property (whether incurred, assumed, guaranteed or secured by any asset) in an amount equal to or greater than the Materiality Threshold;

(iii) all business acquisition, partnership, joint venture, teaming arrangements or other similar Contracts, arrangements or agreements currently in effect or entered into by the Company or any Company Subsidiary since January 1, 2001;

(iv) each Contract of the Company or any Company Subsidiary restricting or otherwise affecting the ability of the Company or any Company Subsidiary to compete in its business or otherwise in any jurisdiction;

(v) all leases or agreements under which the Company or any Company Subsidiary is lessor of or permits any third party to hold or operate any real or personal property owned or controlled by the Company or any Company Subsidiary, that cannot be terminated on 60 days' notice or less without payment of any penalty by the Company or any Company Subsidiary, and which if not so terminated would have a Material Adverse Effect on the Company;

(vi) other than the Management Notes and Pledge Agreements, all Contracts relating to loans to officers, directors or employees that could not reasonably be expected to be paid under such Contract in any fiscal year of the Company;

under each Lease are current, no notice of default or termination under any Lease has been received by the Company or any Company Subsidiary.

(c) Other than as set forth in Section 3.16(c) of the Company Disclosure Schedule, the Company has sufficient property interests in its Owned Real Property and Leased Real Property to operate its business as it is operated at the date of this Agreement.

(d) Except as set forth in Section 3.16(d) of the Company Disclosure Schedule, neither the Company nor the Company Subsidiary, as applicable, has entered into any contract, commitment, lease or other Agreement to sell, convey, assign or otherwise transfer any of the Real Property on which the Railroads operated by the Company Subsidiaries are located.

Section 3.17 Insurance. (a) Section 3.17 of the Company Disclosure Schedule sets forth a true and complete list of all policies of property, casualty, liability and other insurance (other than any insurance policies relating to the Company Benefit Plans) in effect during the period on or after January 1, 2001, including the applicable deductibles thereunder, insuring the properties, assets, employees and/or operations of the Company and/or the Subsidiaries (collectively, the "Policies") and a claims history since January 1, 2001, including any claims relating to Alberta RailNet.

(b) All Policies are in full force and effect, and coverage for the Company and the Company Subsidiaries under the Policies will continue until the Closing, subject to the payment by the Company of the applicable premiums. Neither the Company nor any Company Subsidiary is in default under any provisions of the Policies, and there is no claim by the Company or any Company Subsidiary pending under any of the Policies as to which coverage has been questioned, denied or disputed by the underwriters or issuers of such Policies.

Section 3.18 Bank Accounts. Section 3.18 of the Company Disclosure Schedule lists all bank accounts currently used or held by the Company or a Company Subsidiary and the authorized signatories associated therewith.

Section 3.19 Intellectual Property. (a) Section 3.19 of the Company Disclosure Schedule lists all of the material patents, trademarks, and tradenames used by the Company or any Company Subsidiary in the conduct of its business and all of the material licenses for the use of any intellectual property material to the conduct of the businesses of the Company and the Company Subsidiaries, but excluding licenses for off-the-shelf software (the "Material IP").

(b) The Company and/or each Company Subsidiary owns all right, title and interest in and to, or has a license or other right to use, the Material IP.

(c) To the Knowledge of the Company, the Company's or Company Subsidiary's use of the Material IP does not infringe upon or violate the rights of any other party and, to the Knowledge of the Company, no other party is infringing on any of the Company's or Company Subsidiary's intellectual property rights.

(d) To the Knowledge of the Company, the Company and each Company Subsidiary has valid licenses providing for the necessary number of authorized users for all of the

software forming part of the Material IP and used by the Company or the Company Subsidiary in the conduct of its business.

Section 3.20 Exclusive Dealing. Except as disclosed in Section 3.20 of the Company Disclosure Schedule, neither the Company nor any Company Subsidiary is a party to any contract, commitment or other agreement relating to any Alternative Transaction.

#### ARTICLE IV

#### REPRESENTATIONS AND WARRANTIES

#### OF PURCHASER

Purchaser hereby represents and warrants to the Company, on the date hereof and as of the Closing Date, as follows:

Section 4.1 Organization and Qualification. (a) Purchaser is duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has the requisite power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted.

(b) Merger Sub is duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted.

Section 4.2 Authorization and Validity of Agreement. (a) Purchaser has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby in accordance with the terms hereof. Purchaser has duly authorized the execution, delivery and performance of this Agreement by Purchaser and no other proceedings on the part of the board of directors of Purchaser are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity.

(b) Merger Sub has the requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby in accordance with the terms hereof. Merger Sub has duly authorized the execution, delivery and performance of this Agreement by Merger Sub and no other corporate proceedings on the part of Merger Sub are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by Merger Sub and constitutes the legal, valid and binding obligation of Merger Sub, enforceable against Merger Sub in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium,

fraudulent conveyance or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity.

Section 4.3 Consents and Approvals. Neither the execution and delivery of this Agreement by Purchaser and Merger Sub nor the consummation by Purchaser and Merger Sub of the transactions contemplated hereby will require on the part of Purchaser or Merger Sub or any of their respective Subsidiaries any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity, except (a) approval or waiver by STB, (b) as provided for in Section 2.3 or (c) where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, would not prevent the consummation of the transactions contemplated hereby.

Section 4.4 No Violation. Neither the execution and delivery of this Agreement by Purchaser or Merger Sub nor the consummation by Purchaser or Merger Sub of the transactions contemplated hereby will (a) conflict with or violate its or any Company Subsidiary organizational documents (b) result in a violation or breach of, constitute a default (with or without notice or lapse of time, or both) under, give rise to any right of termination, cancellation or acceleration of, or result in the imposition of any Lien on any material assets or property of Purchaser or Merger Sub or any of their respective Subsidiaries pursuant to any Material Contract or other instrument or material obligation to which Purchaser or Merger Sub or any of their respective Subsidiaries is a party or by which Purchaser or Merger Sub or any of their respective Subsidiaries or any of their respective material assets or properties are bound, except for such violations, breaches and defaults (or rights of termination, cancellation or acceleration or Lien) as to which requisite waivers or consents have been obtained or (c) assuming the consents, approvals, authorizations or permits and filings or notifications referred to in Section 4.3 and this Section 4.4 are duly and timely obtained or made, violate any order, writ, injunction, decree, statute, rule or regulation applicable to Purchaser or Merger Sub or any of their respective Subsidiaries or their respective assets or properties, except for such conflicts, violations, breaches or defaults which would not in the aggregate prevent the consummation of the transactions contemplated hereby.

Section 4.5 Funding and Capitalization. Purchaser has cash available or has existing borrowing facilities which, together with its available cash are sufficient, and at the Closing, Purchaser will have sufficient funds, to enable it to consummate the transactions contemplated by this Agreement and pay all related fees and expenses for which Purchaser will be responsible and will, from time to time, provide assurances and information to the Company as shall reasonably be requested by the Company that it will have such financial capability on the Closing Date. In addition, as of the Closing, Purchaser shall have taken all measures necessary, including, without limitation, the contribution of capital to Merger Sub, to ensure that as of the Closing, after giving effect to the transactions contemplated by this Agreement, including the payment of the Stock Consideration and the satisfaction of all liabilities of the Surviving Corporation, (x) the Surviving Corporation will be "Solvent" and (y) the Present Fair Salable Value of the assets of the Surviving Corporation will exceed its debt, plus its total "capital", as such term is determined in accordance with Section 154 of the DGCL. For purposes of this Agreement, "Solvent" when used with respect to the Surviving Corporation, means that, as of any date of determination (i) the Present Fair Salable Value of its assets will, as of such date,

exceed all of its uninsured liabilities, contingent or otherwise, as of such date that are reflected in the Financial Statements or otherwise incurred in accordance with the terms of this Agreement, (ii) the Surviving Corporation will not have, as of such date, an unreasonably small amount of capital for the business in which it is engaged or will be engaged and (iii) the Surviving Corporation will be able to pay its debts as they become absolute and mature, taking into account the timing of and amounts of cash to be received by it and the timing of and amounts of cash to be payable on or in respect of its indebtedness, in each case after giving effect to the transactions contemplated by this Agreement. The term "Solvency" shall have a correlative meaning. For purposes of the definition of "Solvent", (A) "debt" means liability on a "claim"; and (B) "claim" means (i) any right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (ii) the right to an equitable remedy for breach on performance if such breach gives rise to a right to payment, whether or not such equitable remedy is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. "Present Fair Salable Value" means the amount that may be realized if the aggregate assets of the Surviving Corporation (including goodwill) are sold as an entirety with reasonable promptness in an arms-length transaction under present conditions for the sale of comparable business enterprises.

Section 4.6 Brokers and Finders. In connection with the transactions contemplated hereby, no broker, finder or investment bank has acted directly or indirectly for Purchaser or Merger Sub, and neither Purchaser nor Merger Sub has incurred any obligation to pay any brokerage, finder's or other fee or commission to any Person.

Section 4.7 Physical Connection to Railroads. No railroad owned or controlled by Purchaser physically connects with any of the Railroads.

## ARTICLE V

### COVENANTS OF THE COMPANY

Section 5.1 Conduct of the Company. Except as disclosed in Section 5.1 of the Company Disclosure Schedule, from the date of this Agreement until the Closing, the Company agrees that, except as otherwise contemplated by this Agreement, the Contribution and Transfer Agreement or the Company Disclosure Schedule, or as Purchaser shall otherwise consent in writing (such consent not to be unreasonably withheld, delayed or conditioned), it being agreed and understood that nothing in this Section 5.1 (other than [Redacted]

shall prevent the Company from declaring, setting aside or paying any cash dividend or making any distribution (other than a distribution of any property) with respect to its capital stock on or prior to the Effective Time (it being further agreed that any such dividend or distribution shall not be made subsequent to the time as of which the Closing Working Capital is determined):

(a) Ordinary Course. Subject to the limitations in this Section 5.1, the business of the Company and each Company Subsidiary shall be conducted in the ordinary course consistent

with past practice and the Company and each Company Subsidiary will use its reasonable efforts to keep available the services of key employees engaged exclusively in the business of the Company and/or the Subsidiaries and to preserve the relationships with key customers and suppliers and others having significant business dealings with the business of the Company or any of the Subsidiaries.

(b) Governing Documents. The Company will not amend the Company Organizational Documents.

(c) Issuance of Securities. Neither the Company nor any Company Subsidiary will issue, transfer, sell or dispose of, or authorize or agree to the issuance, transfer, sale or disposition of (whether through the issuance or granting of options, rights, warrants, or otherwise), any shares of capital stock or any voting securities of the Company or the Company Subsidiary or any options, rights, warrants or other securities convertible into or exchangeable or exercisable for any such shares of capital stock or voting securities of the Company or any Company Subsidiary or amend any of the terms of any securities or agreements relating to such capital stock or voting securities outstanding on the date hereof.

(d) No Acquisitions. Neither the Company nor any Company Subsidiary will acquire or agree to acquire, by merging or consolidating with, or by purchasing a substantial equity interest in or substantial portion of the assets of, any business or any corporation, partnership, association or other business organization or division thereof or otherwise acquire or agree to acquire any material assets, in any such case, except in the ordinary course of business.

(e) No Dispositions. Neither the Company nor any Company Subsidiary will sell, lease, license, encumber or otherwise dispose of or agree to sell, lease, license, encumber or otherwise dispose of, any of its assets other than (i) in the ordinary course of business consistent with past practice, (ii) dispositions of inventory or of worn-out or obsolete equipment or assets not required for the continued operation of the business as currently conducted; or (iii) pursuant to existing contractual obligations, all of which contractual arrangements have been disclosed to Purchaser in Section 3.11 or Section 3.13 of the Company Disclosure Schedule.

(f) Maintenance of Properties. The Company and each Company Subsidiary will use its reasonable efforts to maintain and repair all property material to the operation of its business in a manner required for the operation of the Railroads consistent in all material respects with past practice, including the continued maintenance of track and right of way in the ordinary course of business as required by applicable law for operation of the Railroads at the current operating speeds.

(g) Contracts. Except for Contracts relating to capital expenditures (which are governed by Section 5.1(h)), neither the Company nor any Company Subsidiary will enter into any Contract, including any shipping contract, except for Contracts terminable upon not more than 90 days' notice without penalty or payment of any amount. Neither the Company nor any Company Subsidiary will agree to modify or change the rates payable under any shipping Contract.

(h) Capital Expenditures. Section 5.1(h) of the Company Disclosure Schedule sets forth all current Contracts for capital expenditures exceeding [Redacted] Except as set forth in Section 5.1(h) of the Company Disclosure Schedule, neither the Company nor any Company Subsidiary will authorize or make any commitments for capital expenditures exceeding [Redacted] in the aggregate.

(i) Indebtedness. Except for those incurred in the ordinary course of business, consistent with past practice, neither the Company nor any Company Subsidiary will incur, assume, guaranty or otherwise become liable in respect of any indebtedness for borrowed money or subject any of its assets, tangible or intangible, to any Liens.

(j) Compensation and Benefits. Except in the ordinary course of business consistent with past practice or as required by law, neither the Company nor any Company Subsidiary will (i) increase the compensation payable or to become payable to any of its employees, (ii) adopt or amend any Company Benefit Plan, or cause or suffer any addition to or modification thereof or (iii) enter into any collective bargaining agreement or cause or suffer any termination or amendment thereof.

(k) Accounting. The Company will not make any changes in its accounting methods or practices other than as required by law.

(l) Notification.

(i) The Company shall promptly notify Purchaser of any facts or circumstances that, to the Knowledge of the Company, would result in any of the representations and warranties of the Company in this Agreement not being true and correct as of the Closing. Furthermore, the Company shall promptly provide Purchaser with copies of any written notices from any Governmental Entity or notices of any litigation or claims relating to the Company or any Company Subsidiary.

(ii) Purchaser shall promptly notify the Company of any facts or circumstances that to the Knowledge of Purchaser could result in any of the representations and warranties of the Company in this Agreement not being true and correct as of the Closing.

(m) Delivery of Interim Financial Statements. Until the Closing, no later than the 30 days following the end of each calendar month the Company will deliver to Purchaser unaudited balance sheets, statements of income, statements of cash flow and statements of shareholders' equity for the Company and each Company Subsidiary for the immediately preceding month, all of which shall be prepared in accordance with GAAP (subject to normal and customary year-end adjustments).

(n) Maintenance of Policies. The Company will maintain in full force and effect, and pay the premiums when due thereon, all of the Policies currently in effect, and will not voluntarily increase the deductible amounts thereunder.

(o) [Redacted]



(p) Dissenting Stockholders' Notice. The Company shall comply with its obligations under Section 262(d)(2) of the DGCL.

(q) [Redacted]

## ARTICLE VI

### POST CLOSING COVENANTS OF PURCHASER

Section 6.1 Continuation of Benefits Prior to Transfer of Benefits. - [Redacted]

1

Section 6.2 Recognition of Prior Service. In the event that any employee of the Company or any Company Subsidiary is at any time after the Closing Date transferred to Purchaser or any Affiliate of Purchaser or becomes a participant in an employee benefit plan, program or arrangement maintained by or contributed by Purchaser or its Affiliates, Purchaser shall cause such plan, program or arrangement to treat the prior service of such employee with the Company or any of its Subsidiaries, to the extent such prior service is recognized under the comparable plan, program or arrangement of the Company or any of its Subsidiaries, as service rendered to Purchaser or its Affiliates, as the case may be; provided, however, that in

administering such plans, programs or arrangements of Purchaser or its Affiliates, Purchaser may cause a reduction of benefits under any such plans, programs or arrangements to the extent necessary to avoid duplication of benefits with respect to the same covered matter or years of service.

Section 6.3 Medical Plan Provisions. Purchaser will cause its medical, dental and other welfare plans in which current or former employees or their dependants of the Company or any of its Subsidiaries commence to participate after the Effective Time to (i) waive any preexisting condition limitations and (ii) honor any deductible and out-of-pocket expenses incurred by such employees and dependants under similar plans of the Company for the plan year in which such participation begins. Purchaser will cause to be waived any medical certification for such employees up to the amount of coverage such employees had under any life insurance plan of the Company or any of its Subsidiaries.

Section 6.4 Indemnity.

(a) Recognizing that the exclusive remedy of the Purchaser hereunder is set forth in Article VIII hereof, the Purchaser covenants for itself and its successors and assigns, that it and they shall not institute any action or proceeding in any court or before any administrative agency or before any other tribunal against any of the current directors, officers, employees, Affiliates or other representatives of the Company or any of its respective Affiliates, in their capacity as such, with respect to any liabilities, actions or causes of action, judgments, claims or demands of any nature or description (consequential, compensatory, punitive or otherwise), including in each such case any of the foregoing relating to, arising out of or resulting from this Agreement or the transactions contemplated by this Agreement. The Purchaser shall not take any action directly or indirectly to disaffirm or adversely affect the provisions of the articles of organization and bylaws or any other organizational document of the Company or any of its Subsidiaries that provide indemnification of and expense reimbursement to any Person who has been an officer, director, employee, Affiliate or agent of the Company or any Subsidiary of the Company.

(b) In the event Purchaser or any of its respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, to the extent necessary, proper provision shall be made so that the successors and assigns of Purchaser, assume the obligations set forth in this Section 6.4.

Section 6.5 Removal of "RailNet" Portion of Company Name. Promptly following the Effective Date, Purchaser shall amend the Company's certificate of incorporation so as to remove the "RailNet" portion of the Company name from the Company name. Thereafter, the Purchaser will not use the "RailNet" portion of the Company name on any new marketing materials, signage and inventory created by the Company (it being understood that any existing signage shall be removed when customary maintenance affords the Company the opportunity to remove such signage and the Company shall be entitled to use any existing marketing materials or inventory in the ordinary course of business).

Section 6.6 Additional Payments. Notwithstanding anything in this Agreement to the contrary, the Stockholders shall be entitled to the benefit of any payments or other entitlements that the Company may otherwise be entitled to receive in respect of [Redacted]

The Company will, immediately upon receipt, pay the amounts described above in this Section 6.6 to the Stockholders' Representative for distribution to the Stockholders. The Company hereby irrevocably appoints the Stockholders' Representative to act as the Company's attorney-in-fact to take any action required in order to consummate any transactions needed in order for the Company to collect any proceeds to which it is entitled to pursuant to this Section 6.6. In addition, the Company will not take any action which may limit the Company's or any Company Subsidiary's entitlement to such payments or proceeds (including, without limitation, by not amending such wire instructions) and will co-operate in good faith with the Stockholders' Representative (at the Stockholders' sole cost) to secure such payments and proceeds. Any payments received under this Section 6.6 shall be deemed to be payment of Merger Consideration.

Section 6.7 Tax Election. At the request of the Stockholder's Representative, Purchaser shall cause the Company to make the election described in Section 362(e)(2)(C) of the Code in connection with the Company's transfer of Alberta RailNet to RailNet Holdings pursuant to the Contribution and Transfer Agreement, such election to be made in connection with the Company's tax return for the fiscal year in which such transfer occurs. The Company shall cooperate with the reasonable requests of the Stockholders' Representative in connection with the making of such election.

## **ARTICLE VII**

### **COVENANTS OF PURCHASER AND THE COMPANY**

The parties hereto agree that:

Section 7.1 Access to Information. (a) From the date hereof until the Closing Date, the Company (i) will give Purchaser, its counsel, financial advisors, auditors and other authorized representatives reasonable access during normal business hours and on reasonable notice to the officers, properties, books and records of and relating to the Company, (ii) will furnish to Purchaser, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information with respect to the Company, as such Persons may reasonably request and (iii) will instruct its employees, counsel and financial advisors to cooperate with Purchaser in its investigation of the Company. Any information provided, or caused to be provided, by the Company pursuant to this Section 7.1 shall be subject to the terms of the Confidentiality Agreement.

(b) Notwithstanding anything to the contrary in this Agreement:

(i) Prior to the Closing, neither Purchaser nor Merger Sub shall, directly or indirectly, contact any customer or supplier of or others having business dealings with

the Company or any Company Subsidiary without the prior written consent of the Company (which consent may be conditioned on a representative designated by the Company being in attendance for all such contacts, but which shall not be withheld or delayed unreasonably); and

(ii) Prior to the Closing, neither the Company nor any Company Subsidiary shall be required to disclose any information to Purchaser or Merger Sub or any of their representatives if such disclosure would, in the Company's reasonable discretion, (x) jeopardize any attorney-client or other legal privilege, (y) contravene any applicable law, fiduciary duty or binding agreement entered into prior to the date hereof or (z) impact the position taken in any consolidated, combined or unitary return filed by the Company or any Company Subsidiary or any of their respective predecessor entities or affect in any way any of the foregoing's obligations to file, or assertion that it is not obligated to file, any such return.

**Section 7.2 Reasonable Efforts.** (a) Subject to the terms and conditions of this Agreement and applicable law, each of the parties hereto shall act in good faith and use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated hereby as soon as practicable, including such actions or things as the other party may reasonably request in order to cause any of the conditions to such other party's obligation to consummate the transactions contemplated by this Agreement to be fully satisfied. Without limiting the foregoing, the parties shall consult and fully cooperate with and provide assistance to each other in obtaining all necessary consents, approvals, waivers, licenses, permits, authorizations, registrations, qualifications or other permission or action by, and giving all necessary notices to and making all necessary filings with and applications and submissions to, any Governmental Entity or other Person as soon as reasonably practicable after filing. Prior to making any application to or filing with any Governmental Entity or other Person in connection with this Agreement, each party shall provide the other party with drafts thereof and afford the other party a reasonable opportunity to comment on such drafts.

**Section 7.3 Certain Filings.**

(a) As soon as practicable, and in any event the Purchaser shall use best efforts to ensure that no later than ten Business Days after the date hereof, Purchaser, at its sole expense, shall prepare and file such documents as may be required to secure any and all necessary approvals, or exemptions from approval, of the transactions contemplated in the Agreement by the STB. Purchaser shall make all reasonable efforts to obtain such approvals or exemptions prior to the Closing Date. Purchaser shall permit the Company to review (for a period not less than two Business Days, it being agreed that any correspondence from the Company not received within such period shall not be required to be considered by the Purchaser) prior to filing all documents proposed by Purchaser to be filed with the STB or any court in order to secure legal approval or exemption in relation to the transactions contemplated in this Agreement.

(b) Each of the Company and Purchaser shall prepare and file any Other Filings required to be filed by them. The Company and Purchaser shall cooperate with each other and provide to each other all information necessary in order to prepare the Other Filings. The information provided by the Company and Purchaser for use in the Other Filings shall at all times

prior to the Closing Date be true and correct in all material respects and shall not omit to state any material fact required to be stated therein or necessary in order to make such information not false or misleading. Each such filing shall, when filed, comply in all material respects with applicable law.

**Section 7.4 Public Announcements.** Purchaser and the Company will consult with each other before issuing any press release or making any public statement with respect to the transactions contemplated hereby and, except as may be required by applicable law or any listing agreement with any securities exchange, will not issue any such press release or make any such public statement unless the text of such statement shall first have been agreed to by the parties.

**Section 7.5 Notices of Certain Events.** Each of Purchaser and the Company shall promptly notify the other following the receipt of any notice or other communication from any Governmental Entity in connection with the transactions contemplated hereby or of any action, suit, claim or proceeding commenced or, to its knowledge threatened, against it which relates to or seeks to prohibit the consummation of the transactions contemplated hereby.

**Section 7.6 Implied Warranties.** Except as expressly provided in this Agreement, (a) the Company has not made and is not making any representation or warranty whatsoever to Purchaser as to the Company, any Company Subsidiary or their respective businesses and (b) shall not be liable in respect of the accuracy or completeness of any information provided to Purchaser in connection with this Agreement (except with respect to any information that the Company has represented herein as true and complete). Without limiting the foregoing, Purchaser acknowledges that Purchaser, together with its advisors, has made its own investigation of the Company and its businesses and is not relying on any implied warranties (whether of merchantability or fitness for a particular purpose or otherwise), or upon any representation or warranty whatsoever as to the prospects (financial or otherwise), or the viability or likelihood of success, of the businesses of the Company as conducted after the Closing Date, or upon the information contained in the Confidential Information Memorandum furnished by [Redacted] on behalf of the Company, or in any subsequent or supplemental materials provided by the Company, except as expressly provided in this Agreement.

**Section 7.7 Knowledge of Breach.** If prior to the Closing, to the Knowledge of Purchaser, there has occurred any breach of a representation or warranty of the Company, Purchaser shall promptly so notify the Company in writing, in reasonable detail.

**Section 7.8 Stockholders' Representative.** Purchaser shall be entitled to act solely with and rely on the actions of the Stockholders' Representative with respect to all matters relating to the Stockholders under this Agreement or in connection with the transactions contemplated hereunder, including resolution of any indemnification claims under Article VIII. Furthermore, Purchaser shall not be responsible for the proper allocation and payment to the Stockholders of any amounts Purchaser is entitled to pay to the Stockholders' Representative pursuant to the terms of the Agreement or the Escrow Agreement.

Section 7.9 Disclosure Schedules. From time to time up to the Closing Date, the Company will promptly supplement or amend the Company Disclosure Schedule which it has delivered pursuant to this Agreement with respect to any matter first existing or occurring after the date of this Agreement which, if existing or occurring at or prior to the date of this Agreement, would have been required to be set forth or described in such Company Disclosure Schedule or which is necessary to correct any information in such Company Disclosure Schedule which has been rendered inaccurate thereby.

Section 7.10 Consents. Promptly following the execution of the Agreement, the Company will use commercially reasonable efforts to obtain the consents to the transactions contemplated by this Agreement from the parties to the Agreements referenced in Section 3.5 of the Company Disclosure Schedule (it being understood that the obtaining of such consents shall not be a condition to Closing). Notwithstanding anything to the contrary contained in this Agreement, upon written confirmation by Purchaser that all conditions to Purchasers' obligations to consummate the transaction contemplated hereby are satisfied or irrevocably waived, Purchaser shall be entitled to contact the parties from whom the consents are required.

Section 7.11 Contribution and Transfer Agreement. Prior to the Effective Time, the Company shall provide Purchaser with a fully executed copy of the Contribution and Transfer Agreement, as well as any ancillary documents executed and delivered by the Company and/or RailNet Holdings in connection therewith prior to such time.

## **ARTICLE VIII**

### **SURVIVAL; INDEMNIFICATION**

Section 8.1 Indemnification Obligations of Seller. (a) The Company shall be entitled to reimbursement from the funds escrowed pursuant to the Escrow Agreement, such that, subject to the other limitations set forth in this Article VIII, Purchaser and the Company will be held harmless from, against and in respect of any and all claims, liabilities, obligations, losses, costs, expenses, penalties, fines and judgments (at equity or at law) and damages whenever arising or incurred (including amounts paid in settlement and reasonable attorneys' fees and expenses) (any of the foregoing, a "Loss") arising out of or relating to:

(i) any breach or inaccuracy of any representation or warranty made by Company in Article III of this Agreement;

(ii) any breach or nonperformance of any covenant, agreement or undertaking made by Company in this Agreement;

(iii) any claim related to (A) [Redacted]

(iv) any Losses related to the exercise by any Stockholder of Appraisal Rights, to the extent it exceeds the Merger Consideration otherwise payable to such Stockholder;

(v) any retained liability relating to the assignment of the Dallas Office Lease from the Company to RailNet Holdings pursuant to the Contribution and Transfer Agreement; or

(vi) the [Redacted]

(b) Notwithstanding anything to the contrary contained in this Agreement, no claim may be made directly against the Stockholders or the Stockholders' Representative by Purchaser and Purchaser hereby acknowledges that the exclusive remedy for any claim that Purchaser may otherwise have had under this Agreement, may only be made against the funds escrowed pursuant to the Escrow Agreement.

(c) Purchaser will not be entitled to make a claim against the funds escrowed pursuant to the Escrow Agreement (i) for any Losses to the extent that such Losses relate to the negligence, willful misconduct or breach of any representation, warranty, covenant or agreement of Purchaser contained in this Agreement or its officers, agents, employees or representatives, or (ii) to the extent the consummation of the transactions contemplated by the Contribution and Transfer Agreement in accordance with its terms would otherwise constitute a breach of any representation, warranty or covenant of this Agreement (e.g., if the assignment of the Dallas Office Lease, the sale of shares in Alberta RailNet to RailNet Holdings or the transfer of any other assets of the Company described on Exhibit A and B to the Contribution and Transfer Agreement, in each case, in accordance with the terms of the Contribution and Transfer Agreement, would otherwise result in any of the representations or warranties not being true and correct or would result in the breach of any covenant of this Agreement).

(d) Purchaser will take and will cause its Affiliates to take all reasonable steps to mitigate any Losses upon becoming aware of any event which would reasonably be expected to or does give rise to any claim for Losses under this Article VIII, including incurring reasonable costs to the extent reasonably necessary to remedy the breach which gives rise to the Losses.

Section 8.2 Indemnification Obligations of Purchaser. (a) Subject to the limitations set forth in this Article VIII, Purchaser will indemnify and hold harmless the Stockholders from, against and in respect of any and all Losses arising out of or relating to:

(i) any breach or inaccuracy of any representation or warranty made by Purchaser in Article IV of this Agreement;

(ii) any breach or nonperformance of any covenant, agreement or undertaking made by Purchaser in this Agreement.

(b) Purchaser will not have any liability under any provision of this Agreement for any Losses to the extent that such Losses relate to the negligence, willful misconduct or breach of any representation, warranty, covenant or agreement of Company contained in this Agreement or its respective officers, agents, employees or representatives.

(c) The Company will take and will cause its Affiliates to take all reasonable steps to mitigate any Losses upon becoming aware of any event which would reasonably be expected to or does give rise to any claim for Losses under this Article VIII, including incurring reasonable costs to the extent reasonably necessary to remedy the breach which gives rise to the Losses.

Section 8.3 Indemnification Procedure. (a) Promptly after receipt by an Indemnified Party of notice by a third party of a threatened or filed complaint or the threatened or actual commencement of any audit, investigation, action or proceeding with respect to which such Indemnified Party may be entitled to receive payment from the other party for any Loss, such Indemnified Party will provide written notification to Purchaser or Stockholders' Representative, whoever is the appropriate indemnifying party under this Agreement (the "Indemnifying Party"), within thirty (30) days of the Indemnified Party's becoming aware of the threatening or filing of such complaint or of the Indemnified Party's becoming aware of the threatened or actual commencement of such audit, investigation, action or proceeding; provided, that the failure to so notify the Indemnifying Party will relieve the Indemnifying Party from liability under this Agreement with respect to such claim only to the extent that such failure to notify the Indemnifying Party results in (i) the forfeiture by the Indemnifying Party of rights and defenses otherwise available to the Indemnifying Party with respect to such claim or (ii) prejudice to the Indemnifying Party with respect to such claim. The Indemnifying Party will have the right, upon written notice delivered to the Indemnified Party within twenty (20) days thereafter, to assume the defense of such complaint, audit, investigation, action or proceeding, including the employment of counsel and the payment of the fees and disbursements of such counsel. In the event, however, that the Indemnifying Party declines or fails to assume the defense of the audit, investigation, action or proceeding on the terms provided above within such twenty (20) day period, then the Indemnified Party may employ counsel to represent or defend it in any such audit, investigation, action or proceeding; provided, that the Indemnifying Party will not be required to pay the fees and disbursements of more than one counsel for all Indemnified Parties in any single audit, investigation, action or proceeding. In any audit, investigation, action or proceeding with respect to which indemnification is being sought under this Agreement, the Indemnified Party or the Indemnifying Party, whichever is not assuming the defense of such



action, will have the right to participate in such matter and to retain its own counsel at its own expense. The Indemnifying Party or the Indemnified Party, as the case may be, will at all times use reasonable efforts to keep the Indemnifying Party or the Indemnified Party, as the case may be, reasonably apprised of the status of any matter the defense of which they are maintaining and to cooperate in good faith with each other with respect to the defense of any such matter.

(b) No Indemnified Party may settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought under this Agreement without the prior written consent of the Indemnifying Party (such consent not to be unreasonably withheld, delayed or conditioned) unless the sole relief granted is equitable relief for which the Indemnifying Party would have no liability or to which the Indemnifying Party would not be subject. The Indemnifying Party shall not compromise or settle any such legal action or other claim without the prior written consent of the Indemnified Party (such consent not to be unreasonably withheld, delayed or conditioned) unless the terms and conditions of such compromise or settlement proposed by the Indemnifying Party and agreed to in writing by the claimant in such legal action or other claim (a) include a full release of the Indemnified Party from the legal action or other claim which is the subject of the settlement proposal and (b) do not include any term or condition which would restrict in any manner the business or operations of the Indemnified Party.

Section 8.4 Survival Period. The representations and warranties contained in this Agreement shall terminate and expire on [Redacted], and Purchaser shall cease to be entitled to reimbursement pursuant to Section 8.1(a)(i) with respect to any Loss with respect thereto for which notice of actual Losses incurred has not been given prior to [Redacted]

Section 8.5 Liability Limits. (a) Basket and Deductible. Purchaser shall not be entitled to reimbursement from the funds escrowed pursuant to the Escrow Agreement pursuant to Section 8.1(a)(i) (other than claims relating to Sections 3.2(a) hereof) above until the aggregate of all Losses suffered by Purchaser with respect to such matters (but for clarification, excluding claims relating to Sections 3.2(a) hereof) exceed the sum (for purposes of this Section 8.5(a), such sum is referred to as the "Deductible Amount") of [Redacted] and then only for such Losses that exceed the Deductible Amount.

(b) Cap. Purchaser shall have no right to reimbursement from the funds escrowed pursuant to the Escrow Agreement to the extent (i) if the claim is made pursuant to Sections 8.1(a)(i) through (v) on or prior to the [Redacted], the amounts previously paid or payable under this Agreement from the funds escrowed pursuant to the Escrow Agreement exceed (or would upon payment of such claim exceed) [Redacted]; (ii) if the claim is made pursuant to Section 8.1(a)(vi) on or prior to [Redacted], the amounts previously paid or payable under this Agreement with respect to claims under Section 8.1(a)(vi) from the funds escrowed pursuant to the Escrow Agreement exceed (or would upon payment of such claim exceed) [Redacted]; (iii) if the claim is made pursuant to Section 8.1(a)(iii)(A) after [Redacted], the amounts previously paid or payable under Section 8.1(a)(iii)(A) exceed (or would upon payment of such claim exceed) [Redacted]

, (iv) the claim is made after [Redacted] and the claim is not made pursuant to Section 8.1(a)(iii)(A) or (v) the claim is made for any reason after [Redacted] ✓

(c) Available Insurance and Recovery from Third Parties. The amount of any Loss suffered hereunder shall be determined after taking into account all amounts to which the Indemnified Party receives from third parties or under the provisions of all agreements and/or insurance policies with third parties (i.e., actual insurance policies, and not self-insurance or retention programs) in existence prior to Closing (subject to offset for any increase in premiums attributable to such Losses or payments made in respect of such Losses or other expenses incurred in connection with the collection of such amounts). The parties agree to use reasonable efforts to collect amounts available from third parties or under any such agreement or insurance policy; provided, however, that with respect to amounts available from third parties, the Indemnified Party may assign its rights with respect thereto to the Indemnifying Party and such amounts shall not be taken into account in determining the amount of any Loss suffered hereunder.

Section 8.6 Exclusive Remedies. The provisions of this Article VIII set forth the exclusive rights and remedies of the Stockholders' Representative (on behalf of the Stockholders) and Purchaser to seek or obtain damages or any other remedy or relief whatsoever from any party with respect to matters arising under or in connection with this Agreement and the transactions contemplated by this Agreement.

Section 8.7 Indemnification Amounts. To the extent permitted by law, any payment for indemnification hereunder shall be treated as an adjustment to the Merger Cash Consideration.

## ARTICLE IX

### CONDITIONS TO THE MERGER

Section 9.1 Conditions to Obligations of Each Party. The respective obligations of each party hereto to consummate the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing Date of the following conditions, any or all of which may be waived in writing by the Company or Purchaser in whole or in part, to the extent permitted by applicable law:

(a) No Injunction. No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated or enforced any statute, rule, regulation, executive order, decree, judgment, preliminary or permanent injunction or other order which is in effect and which prohibits, enjoins or otherwise restrains the consummation of the transactions contemplated hereby; provided, that the parties shall use commercially reasonable efforts to cause any such decree, judgment, injunction or order to be vacated or lifted; and

(b) STB Waiting Period. Any applicable waiting period, as prescribed by the STB, shall have expired or terminated and no action shall have been instituted by the STB challenging or seeking to enjoin the consummation of the transactions contemplated hereby, other than any such action that shall have been withdrawn or terminated.

Section 9.2 Conditions Precedent to the Obligations of the Company. The obligation of the Company to effect the transactions contemplated hereby is also subject to the satisfaction at or prior to the Closing Date of each of the following additional conditions, unless waived in writing by the Company:

(a) Accuracy of Representations and Warranties. All representations and warranties made by Purchaser herein shall be true and correct in all material respects with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except for changes permitted or contemplated by this Agreement and except for representations and warranties that are made as of a specific date or time, which shall be true and correct in all respects only as of such specific date or time; except for such failures of such representations and warranties to be true and correct as would not, individually or in the aggregate, have a material adverse effect on the ability of Purchaser to perform its obligations hereunder and consummate the Merger on the Closing Date;

(b) Compliance with Covenants. Purchaser shall have performed in all material respects all obligations and agreements, and complied in all material respects with all covenants, contained in this Agreement to be performed or complied with by it prior to or at the Closing Date;

(c) Certified Resolutions. The Company shall have received a true and complete copy, certified by the Secretary or an Assistant Secretary of Merger Sub, of the resolutions duly and validly adopted by the board of directors of Merger Sub and by Purchaser as the sole stockholder of Merger Sub, evidencing their authorization of the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby;

(d) Officer's Certificates. The Company shall have received such certificates of Purchaser, dated the Closing Date and signed by an executive officer of Purchaser, to evidence satisfaction of the conditions set forth in Sections 9.2(a) and (b) (insofar as each relates to Purchaser) as may be reasonably requested by the Company;

(e) Consents. All consents, approvals, orders, authorizations, registrations, declarations, rights of first refusal and filings referred to in Section 4.3 required to be obtained or made prior to the Closing Date shall have been made or obtained; and

(f) Solvency Certificate. The Company shall have received from Purchaser and Merger Sub a long-form solvency certificate in the form attached as Exhibit C.

Section 9.3 Conditions Precedent to the Obligations of Purchaser. The obligation of Purchaser to effect the transactions contemplated hereby is also subject to the

satisfaction at or prior to the Closing Date of each of the following additional conditions, unless waived in writing by Purchaser:

(a) Accuracy of Representations and Warranties. All representations and warranties made by the Company herein shall be true and correct in all material respects on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except for changes permitted or contemplated by this Agreement and except for representations and warranties that are made as of a specific date or time, which shall be true and correct in all respects only as of such specific date or time; except for such failures of such representations and warranties to be true and correct (without giving effect to any limitation or qualification as to "materiality" (including the word "material") or "Material Adverse Effect" set forth herein) as would not, individually or in the aggregate, have a Material Adverse Effect on the Company; provided, however, that any amendments to the Company Disclosure Schedule made after the date hereof as permitted by Section 7.9 shall be disregarded for the purposes of this Section 9.3(a);

(b) Compliance with Covenants. The Company shall have performed in all material respects all obligations and agreements, and complied in all material respects with all covenants, contained in this Agreement to be performed or complied with by it prior to or on the Closing Date;

(c) Certified Resolutions. Purchaser and Merger Sub shall have received a true and complete copy, certified by the Secretary or an Assistant Secretary of the Company, of the resolutions duly and validly adopted by the board of directors and the Stockholders, evidencing its authorization of the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby;

(d) Officer's Certificates. Purchaser shall have received such certificate of the Company, dated the Closing Date, signed by an executive officer of the Company to evidence satisfaction of the conditions set forth in Sections 9.3(a) and (b) as may be reasonably requested by Purchaser;

(e) Consents. All consents, approvals, orders, authorizations, registrations, declarations and filings referred to in Section 3.4 required to be made or obtained prior to the Closing Date shall have been made or obtained;

(f) Closing under Contribution and Transfer Agreement. The transactions contemplated by the Contribution and Transfer Agreement shall have been consummated in accordance with its terms (including, without limitation, the transfer of the capital stock of Alberta RailNet and certain assets of the Company located in Dallas, Texas to RailNet Holdings); and

(g) Termination of Guarantees. All of the Company's guarantees of any contracts, liabilities or obligations of Alberta RailNet shall have been terminated without any continuing liability of the Company.

## ARTICLE X

### TERMINATION

Section 10.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date:

(a) by mutual written consent of the Company and Purchaser;

(b) by either the Company or Purchaser, if (i) any federal or state court of competent jurisdiction or other federal or state governmental or regulatory body shall have issued any judgment, injunction, order or decree prohibiting, enjoining or otherwise restraining the transactions contemplated by this Agreement and such judgment, injunction, order or decree shall have become final and non-appealable (provided, that the party seeking to terminate this Agreement pursuant to this paragraph (b) shall have used commercially reasonable efforts to remove such judgment, injunction, order or decree) or (ii) any statute, rule, regulation or executive order promulgated or enacted by any federal or state governmental authority after the date of this Agreement which prohibits the consummation of the transactions contemplated hereby shall be in effect;

(c) by the Company, if any condition in Section 9.1 or 9.2 shall have become incapable of satisfaction and shall not have been waived by the Company prior to the Termination Date; or

(d) by Purchaser, if any condition in Section 9.1 or 9.3 shall have become incapable of satisfaction and shall not have been waived by Purchaser prior to the Termination Date.

Section 10.2 Effect of Termination. In the event of any termination of this Agreement pursuant to Section 10.1 hereof, this Agreement forthwith shall become void and of no further force or effect, and no party hereto (or any of its Affiliates, directors, officers, agents or representatives) shall have any liability or obligation hereunder, except in accordance with the expense provisions of Section 11.4 and the confidentiality provisions of Section 7.1, which shall survive any such termination.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered, mailed or transmitted, and shall be effective upon receipt, if delivered personally, mailed by registered or certified mail (postage prepaid, return receipt requested) or sent by fax (with immediate confirmation) or nationally recognized overnight courier service, as follows:

(a) if to Purchaser, to:

OmniTRAX, Inc.  
252 Clayton Street, Fourth Floor  
Denver, CO 80206  
Attn: Dwight N. Johnson  
Fax: (303) 393-0041

with a copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
950 17<sup>th</sup> Street, Suite 1600  
Denver, Colorado 80202  
Attn: William R. Neff  
Fax: (303) 825-6525

(b) if to the Company, to:

North American RailNet, Inc.  
2350 Airport Freeway, Suite 300  
Bedford, Texas 76022  
Attn: [Redacted]  
Fax: [Redacted]

with a copy to:

[Redacted]

(c) if to the Stockholders' Representative, to:

[Redacted]

with a copy to:

[Redacted]

or to such other Person or address or facsimile number as any party shall specify by like written notice to the other parties hereto (any such notice of a change of address to be effective only upon actual receipt thereof).

Section 11.2 Entire Agreement. This Agreement (including the schedules, exhibits and other documents referred to herein), together with the Confidentiality Agreement, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior written or oral and all contemporaneous oral agreements and understandings between any of the parties hereto with respect to the subject matter hereof.

Section 11.3 Assignment; Binding Effect. Neither this Agreement nor any of the rights, benefits or obligations hereunder may be assigned, in whole or in part, by either party (whether by operation of law or otherwise) without the prior written consent of the other party hereto. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer on any Person, other than the parties or their respective successors and assigns and, with respect to Section 2.9(d), the parties to the Management Notes, Section 2.10(a), the Stockholders, and Section 6.4, the Persons indemnified therein, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 11.4 Fees and Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby (including, without limitation, fees and disbursements of counsel, financial advisors and accountants) shall be borne by the party which incurs such cost or expense, except as provided for in Section 2.4(b).

Section 11.5 Amendments. This Agreement may be amended by the parties at any time prior to the Closing Date; provided, that this Agreement may not be amended or modified except by an instrument in writing signed on behalf of each of the parties hereto.

Section 11.6 Waivers. At any time prior to the Closing Date, the Company, on the one hand, or Purchaser, on the other hand, may, to the extent legally allowed, (a) extend the time specified herein for the performance of any of the obligations or other acts of the other, (b) waive any inaccuracies in the representations and warranties of the other contained herein or in any document delivered pursuant hereto or (c) waive compliance by the other with any of the agreements or covenants of such other party or parties (as the case may be) contained herein. Any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of the party or parties to be bound thereby. No such extension or waiver shall constitute a waiver of, or estoppel with respect to, any subsequent or other breach or failure to strictly comply with the provisions of this Agreement. The failure of any party to insist on strict compliance with this Agreement or to assert any of its rights or remedies hereunder or with respect hereto shall not constitute a waiver of such rights or remedies.

Section 11.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so

long as the economic or legal substance of the transactions contemplated thereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

Section 11.8 Captions. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 11.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

Section 11.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of laws (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

Section 11.11 Limitations of Remedies; CERCLA Waiver. Neither party hereto shall be liable to the other for indirect, special, incidental, consequential or punitive damages claimed by such other party resulting from such first party's breach of its obligations, agreements, representations or warranties hereunder. Notwithstanding anything to the contrary in this Agreement, Purchaser and its successors and assigns hereby waive, and unconditionally release the Stockholders from, any rights and remedies that Purchaser and its successors and assigns may otherwise have against the Stockholders under any Environmental Law, including, without limitation, any claims for contribution under CERCLA or common law.

Section 11.12 Legal Representation.

[Redacted]



**Section 11.13 Jurisdiction; Venue; Services of Process.** Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of New York and of the United States of America, in each case located in the County of New York, for any Proceeding arising out of or relating to this Agreement and the transactions contemplated hereby (and agrees not to commence any Proceeding relating thereto except in such courts), and further agrees that service of any process, summons, notice or document by U.S. registered mail to its respective address set forth in this Agreement shall be effective service of process for any Proceeding brought against it in any such court. Each of the parties hereto hereby irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of this Agreement or the transactions contemplated hereby in the courts of the State of New York or the United States of America, in each case located in the County of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

IN WITNESS WHEREOF, the parties have executed this Merger Agreement as of the date first above written.

COMPANY:

NORTH AMERICAN RAILNET, INC.

By: \_\_\_\_\_  
Name:  
Title:

PURCHASER:

OMNITRAX, INC.

By: \_\_\_\_\_  
Name:  
Title:

MERGER SUB:

RN RAIL HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

Exhibit A

Escrow Agreement

See Attached Form of Escrow Agreement

[Redacted]

**EXHIBIT B**

**[Redacted]**

**EXHIBIT C**

**SOLVENCY CERTIFICATE  
OF  
OMNITRAX, INC.**

**[Redacted]**

Exhibit D

GDOT Term Sheet

[Redacted]

**Exhibit E**

**[Redacted]**